

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

---

Transcript of Record.

---

JAMES B. SMITH, F. C. MILLS and E. H.  
MAYER,

Plaintiffs in Error,  
vs.

THE UNITED STATES OF AMERICA,  
Defendant in Error.

---

VOLUME IV.  
(Pages 1153 to 1536, Inclusive.)

---

Upon Writ of Error to the United States District Court of the  
Northern District of California, First Division.

Filed

JUL 1 - 1915

F. D. Monckton,  
Clerk.



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

---

Transcript of Record.

---

JAMES B. SMITH, F. C. MILLS and E. H.  
MAYER,

Plaintiffs in Error,  
vs.

THE UNITED STATES OF AMERICA,  
Defendant in Error.

---

VOLUME IV.  
(Pages 1153 to 1536, Inclusive.)

---

Upon Writ of Error to the United States District Court of the  
Northern District of California, First Division.

---





(Testimony of Thomas T. Sawdon.)

Q. So you were familiar with those figures at the times you started upon each one of your journeys?

A. Why, yes, it was put upon the abstract before we started on the journey.

\* \* \* \* \*

Q. Did you notice any difference between the quantity of coal which was set forth in the bills presented to you by the Western Fuel Company in which the quantity of coal which the Western Fuel Company claimed it had deposited in your ship was set forth and the quantity of coal which you found in the bunkers, estimated by 42 cubic feet to the ton?

Mr. McCUTCHEN.—If your Honor please, if it is to be [1008—949] determined by the estimate of 42 cubic feet to the ton, that could have been made without reference to the consumption of coal; that is to say, it could be determined by the dimensions of the pile of coal.

Mr. ROCHE.—There is nothing in the question about consumption.

Mr. KNIGHT.—Let me suggest this, with the permission of your Honor, that counsel has not in that question offered to show that it was 42 cubic feet to the ton. That offer of proof is lacking.

The COURT.—That is quite true; that is an element that is absolutely lacking.

Mr. OLNEY.—And I would further suggest, your Honor, that the witness has already answered the question; he says that if there were 42 feet he would find a shortage, and if there were 37 or 38 feet, as stated here, there was no shortage.

(Testimony of Thomas T. Sawdon.)

The COURT.—Yes, I know, but this is only putting it in other words. He has already stated he would find a shortage if he measured it at 42 feet.

Mr. ROCHE.—Then I won't press that question in view of that testimony. That is all.

(There was no cross-examination of this witness.)

[1009—950]

**[Testimony of J. T. F. Burns, for the Government.]**

J. T. F. BURNS, a witness called for the United States and sworn, testified as follows:

Direct Examination by Mr. ROCHE.

I now live, and have lived for about 10 or 11 years, in San Francisco, and am employed in the custom-house service as an opener and packer, and have been so employed for about three years. Before that I was a laborer. I first joined the custom-house service in October, 1906, when I was employed as assistant to the weighers and inspectors doing the weighing and packing and opening up of merchandise on the front imported into San Francisco from foreign countries. My official designation then was "laborer." I know where the Mail Dock is situated in San Francisco. The first three years of my employment in the custom-house service I would be assigned there very occasionally merely to relieve some regular custom-house weigher. On such occasions I would be watching the buckets raised and tallying the buckets as they came out of the coal barge and went into the ships. I never called for any weights. I don't suppose I acted as assistant

(Testimony of J. T. F. Burns.)

weigher during the first three years of my employment more than three or four times, nor did I act more frequently in such capacity thereafter, so that I very rarely acted as assistant weigher at all. I would not remain upon any barge over an hour at a time on any occasion.

Q. I want you to go on and state to the jury what, if anything, you observed upon these occasions upon which, or upon some of these occasions upon which you acted as assistant relief weigher upon the barges.

A. Well, my appointment as assistant [1010—951] weigher, would be for the weigher to be relieved to go to the toilet, or go and get paid, some little thing that would not take long, and in weighing the coal, I noticed that some buckets were fuller than others; I also noticed that there was a signal—a signal would be blown a certain way, and the bucket would be fuller that time than any other time.

I was on the docks in the vicinity of the barges very nearly every day. I would sometimes be on the steamers loafing around and waiting for my duties to begin as laborer. I was for two seasons on a tea detail getting samples of tea. I would perform my duties in this connection on the Mail Dock. I would also be putting merchandise on the scales, getting the gross weight, working with the inspectors, etc. The greater part of my duties were performed upon the dock rather than upon the liners. It was upon those occasions that I would observe the operations which resulted in these liners being coaled from the barges. I was located upon and about the Mail Dock

(Testimony of J. T. F. Burns.)

for about three years, beginning with 1906 and up until October 1st, 1910. I would not be on the decks of the liners more than 15 or 20 minutes at a time, but I would go on deck as often as three or four times a month and sometimes three or four times a day. I would be just loafing about waiting for other freight to come up so that I could get at the freight with which I had to deal.

Q. Upon some of those occasions, did you observe weights being taken?     A. Yes.

Q. And upon other occasions, would you observe the tub being hoisted from the hold of the barge to the falls of the hoist?     A. Yes. [1011—952]

Q. Did you, upon some of those occasions, observe the condition of the tubs, so far as the coal was concerned?     A. Yes.

Q. I want you to go on and state in your own way what you observed with reference to the quantity of coal that would be contained in these tubs on occasions when weights were not being taken, and what you observed with respect to the quantity of coal contained in the tubs upon occasions when weights were taken.

A. My observation of the weighing was that they would take along about every fourteenth or fifteenth tub, and when they came up out of the hold of the barge, the coal would be all falling off of it, and the other times, you could not see where the coal was in the bucket; once in a while you could see a big lump sticking out of the tub, and none on the side. I noticed on one occasion, I saw one weigher having

(Testimony of J. T. F. Burns.)

trouble with the men shoveling coal into the tubs, and he weighed ten tubs. After he took the first three weights, I noticed that the other seven buckets were fuller than the first three tubs.

Q. To what extent?

A. To the extent that they came up out of the hold with the coal falling off of them.

Q. Do you recall whether upon those occasions you observed the character of the coal, as to whether it was lump coal or fine coal?     A. No, I don't.

Q. You do not recall.     A. No.

Apart from this specific occasion, I would occasionally observe the coaling operation from alongside the barge. I would be about 20 feet I suppose from the hatchway. I could not give any stated number of times that I, during the first three years of my service, observed weights being taken upon the barges. I cannot fix that definitely at all. It would [1012—953] sometimes occur more than once in a given day.

Q. Upon those occasions, ordinarily, and without referring to any specific occasions, what did you observe regarding the quantity of coal that would be contained in the tubs that were weighed?

A. Well, the exact weight, I could not tell.

Q. I do not mean so far as the pounds or tons are concerned, but I mean as to what you observed regarding the quantity of coal in the tubs, how was the coal located upon the tubs?

A. Well, it always, at any rate it rather looked heaped up on the center, and that is the reason I



(Testimony of J. T. F. Burns.)

always had the idea it rolled off the center of the tub.

Q. What would you ordinarily observe regarding the quantity of coal contained in these tubs which were not weighed?

A. Well, sometimes you could see the coal in the tub, and sometimes you could not.

Q. How many barges, ordinarily, would be coaling these liners?

A. Well, at the first start, they would have one barge on one side of the ship, and when they got the freight out of the ship, they would put another on the other side, on the offshore side.

Q. That is, there would be one barge, between the ship and the dock?     A. Yes.

Q. And another barge on the offshore side of the vessel?     A. Yes.

Q. Upon those occasions, while you were acting as assistant weigher, relieving, temporarily, regular assistant weighers, did you ever have any difficulty or trouble, yourself, either with a hatch-tender or the men in the hold, regarding the quantity of coal which is being placed from time to time upon those tubs?  
[1013—954]

A. Well, on one time when a tub came up, it was not anywhere near full, and I hollered down the hatch, "Fill them tubs up," and the answer I got back don't look very good in print, so I did not bother any more.

I remember visiting the Mission Street bunker in 1908 to relieve a man named Regan. He was detailed to cord and seal the trucks on the sides of the

(Testimony of J. T. F. Burns.)

coal cars in the night-time so that the cars could not be moved during the night. He would go there then in the morning and break the seal before they could take the coal off, and, between 12 and 1 o'clock he would have the cars sealed in a similar fashion. I sometimes relieved Mr. Regan and did this work for him. The chutes themselves were also sealed up. I would take the cord and twine and put them around the lock of the chute and put the Government or custom-house seal thereon. I think that practice was pursued for about six months.

Q. Now, do you recall an occasion when you relieved Regan observing coal being discharged into the coal cars?     A. Yes.

Q. Just go on and state to the jury what you observed upon that occasion, in that connection.

A. I walked down the tracks when I relieved Regan, I was probably 200 feet from it, and he was explaining to me what I had to do, and I walked down there and I noticed the way the coal was coming out of the chute into the coal cars; the cars would be brought up half way on the chute, and about one-half of the coal would go into the car, and the other half would go down the chute into the bunkers.  
[1014—955]

Q. Was that the forward or rear end of the car?

A. The forward end at that time.

Q. In other words, a part of the chute projected beyond the side or end of the car, is that correct?

A. Yes.

Q. Do you recall the names of any of the employees

(Testimony of J. T. F. Burns.)

that were working upon that train of cars at that time?

A. No, I just know the man by sight. I don't know his name.

Q. At the time you reached the point where the cars were located, had the coal already flowed through the chute from the hopper above?

A. Yes, that first car had been filled, and they moved up the next car. With the next car, the same performance was gone through, and I notified them if they did not move the car up forward I would seal the car up and send for the inspector.

Q. What did he do?

A. He moved the car up and loaded the car and called be a son-of-a-b——.

Q. What proportion of the coal was going into the car and what proportion of the coal was going down into the bunker?

A. There was a quarter going out of the chute that went down below into the bunker.

Q. Was that the only time that you saw anything of that kind upon the Mission bunker?

A. Yes, that was the only time on the Mission bunker.

Cross-examination by Mr. McCUTCHEN.

I have been on the Mission Street bunkers several times off and on. I suppose altogether about 25 or 30 times. The occasion on which I saw the coal flowing over the car was the only occasion on which I was up on those bunkers when they were unloading. The other times I was there for the purpose of [1015—



(Testimony of J. T. F. Burns.)

956] testing the scales. I became an opener and packer in 1910, and have had no promotion since then.

Q. When the coal flowed over the car on the Mission Street bunker in the way you have described, did you report it to anybody?

A. No, sir, I did not.

Q. Didn't you know that there was an assistant weigher there representing the Government?

A. Yes, sir.

Q. Why didn't you report it to him?

A. I thought it was his business to see it as well as it was mine.

Q. You thought it was part of his duty to see whether coal did overflow the cars, or not, did you?

A. Yes, sir.

Q. Did you feel that your duty to the Government made it proper that you should report that to him?

A. My duty made me feel that it did, but in order to hold my position I knew it was better not to report it.

Q. What did you go there for at that time?

A. Because I was detailed there.

Q. What for?     A. To relieve this man Reagan.

Q. What was his duty there?

A. His duty was to seal that car and see that they came up all right.

Q. To see that they came up all right?

A. Yes, sir.

Q. You went there for the purpose of seeing whether those cars overflowed, did you not?

(Testimony of J. T. F. Burns.)

A. No, sir.

Q. What did you go there for?

A. To see that the cars were put on the chute right, and to see at quitting time that they were properly sealed. [1016—957]

Q. You went there, did you not, to see that all of the coal was weighed,—that was really your purpose, was it not? A. Yes.

Q. You say that having seen that, you did not make a report of it to anybody.

A. I did not make a report of it because it stopped when I ordered it to stop, it didn't go any further.

Q. Who was your superior officer at that time?

A. A man by the name of Wooster.

Q. Did you report it to him?

A. No, sir, I did not.

Q. Why didn't you report it to him?

A. Because the man was too dishonest to report anything to.

Q. That man Wooster is dead, is he not?

A. Yes, I am sorry to say he is; I wish he was here.

Q. How long was he in the Government service?

A. I can't tell you.

Q. When did he die?

A. I guess he is dead pretty near a year, isn't he?

Q. I don't know; I am asking you.

A. I don't know how long he is dead.

Q. Was he in the Government service all the time you were in that service, up to the time he died?

A. Yes, sir.

Q. And he had been in the Government service a

(Testimony of J. T. F. Burns.)

great many years before you were employed by the Government?     A. Yes, sir.

Q. And he was your superior officer?

A. Yes, sir.

Q. And he sent you there for the purpose of seeing whether all that coal was weighed?

A. I could not say whether he gave me the details or who gave it to me, but I got it from his office.

[1017—958]

Q. And you knew that you were sent there for the purpose of seeing that all the coal was weighed?

A. Yes, sir, I seen that it was all weighed after I got there.

Q. But you didn't make a report that some of it was not weighed?     A. No, sir.

Q. Do you know who the weigher was that was on the dock at that time?

A. I think the weigher on the dock at that time was Nealon. I could not say for sure; I think it was Nealon.

Q. And you did not say anything to him about it?

A. I did not.

Q. Did the response that the man made to you on the Mission Street dock when you spoke to him anger you?

A. No, it didn't anger me; that is one thing nobody can do, is to anger me.

Q. Who was the weigher on board the barge at the time you say a peculiar signal was given?

A. A weigher by the name of Root.

Q. Where is he?

(Testimony of J. T. F. Burns.)

A. He is out of the service.

Q. Do you know where he is?

A. No, sir, I do not.

Q. Then you never saw that on but one occasion?

A. Oh, I didn't say I saw it on but one occasion; I saw it several times.

Q. Was Root always the man there when you saw it? A. Oh, no.

Q. Who were the other Government weighers?

A. I don't know; I didn't keep any track of them.

Q. Did you report that to them?

A. No, sir, I did not.

Q. Did you report it to your superior officer?

A. No, sir, I did not.

Q. Did you report it to anybody connected with the Government service?

A. I did not. [1018—959]

Q. You have said that you were under Mr. Wooster? A. Yes.

Q. Was there anyone over you, and between your grade and that of Wooster?

A. Yes, there were assistant weighers.

Q. Who were they?

A. All the men who were assistant weighers down there.

Q. Were you subject to their orders?

A. Yes, sir.

Q. Did you regard all of them as dishonest men?

A. No, sir, I did not, I regarded them as thoroughly honest.

Q. Why didn't you report this to them, what you

(Testimony of J. T. F. Burns.)

saw on the barges?

A. Well, they should have their eyes, it is their duty to see it and not mine.

Q. If they were thoroughly honest men why didn't you call their attention to it?

A. Because I didn't propose to be classified as a stool pigeon going around telling every man what he ought to see, when they ought to see it themselves.

Redirect Examination by Mr. ROCHE.

Mr. Wooster who was chief weigher in the employ of the Government, and to whom I have referred, was either dismissed or allowed to resign before his death. He did not die in the service.

**[Testimony of Frank McKenna, for the  
Government.]**

FRANK McKENNA, a witness called for the United States and sworn, testified as follows:

Direct Examination by Mr. ROCHE.

I live now and have lived for about 31 years in San Francisco. I am now working at Payne's Bolt Works, and have been there for about eight months. Prior to that time I was employed on the dock of the Pacific Mail Steamship Company for about 9 years doing stevedoring. At odd times I was employed by the [1019—960] Western Fuel Company. Beginning, I think 7 or 8 months previous to the earthquake, I worked on their barges. They had only two that they used to dump on top with. I worked for them up to as late as two and a half years ago, I guess, and on those two barges only. The

(Testimony of Frank McKenna.)

other barges had automatic dumpers. My work with the Western Fuel Company as dumper was occasional. I was able from my position up in the framework of the rigging to see the tubs that would rise from time to time from the hatch. I had to watch out closely for that so as to avoid getting hit by the rising tubs. Those barges would coal various ships, including the ships of the Pacific Mail Steamship Company. During the 7 or 8 months before the fire when I thus worked as dumper, I noticed the weights being taken. Sometimes they worked only six men and sometimes eight men. If only six were working, they would only weigh three tubs every hour. They used the platform scales on those barges, and, in order to put a tub on the scales, two men had to be summoned from the hold of the barge. On such occasions the Government weigher would say that he wanted to weigh such and such tubs and the hatch-tender would sing out for two men to come up from the hold.

Q. When the hatch-tender would sing out "two men come up, tub on scales," where would the first tub be that was afterwards to be weighed?

A. The first tub would not be hoisted yet. It is after the last tub lands that he says "two men come up," and then they would hook on a tub and come up and weigh it. There was no loss of time.

Q. You understand what is meant by meeting the hook, do you not? A. Yes, sir.

Q. Would this signal be given by the hatch-tender before the [1020—961] hook would be met?



(Testimony of Frank McKenna.)

A. Well, as soon as the tub was landed. Then those men would shove their tub in and then they would come up and those other fellows would fill that tub and they would weigh a round of tubs,—three.

Q. What, if anything, did you notice as to the quantity of coal in tubs that were weighed as compared with those that were not weighed?

A. Well, on account of weighing them, and they had so much time there, they could fill them a little fuller.

Q. Irrespective of what they could do, Mr. McKenna, what was the practice as observed by you?

A. Well, the men were worked so hard to meet the hook that the tub would not come as full according to my mind as I could see it as it would be when it came on the scales because then they were not worked to death and sweated to death.

\* \* \* \* \*

Mr. ROCHE.—Q. Did the tubs which were weighed contain more coal so far as quantity was concerned than the tubs that were not weighed?

A. Well, as I explained before, the men would have a little more time below and they would naturally scrape up and shovel in the scrapings and everything and that would naturally be a little more coal at times than at previous other times. Then again they would probably put big lumps in at times to block the hole so as to have a little rest, and then they would have to get crow-bars to open up the hole.

(Testimony of Frank McKenna.)

Q. Can you describe the appearance of the coal in the tubs, whether it was below the sides of the tub, or above the sides of the tub, or how?

A. Sometimes there would be lumps, and at other times finishing up the barge there would be screenings like, and naturally the screenings in my eyes would weigh more than the lumps, than [1021—962] the heaviest part of the big lumps.

Q. Let me direct your attention to the tubs that were being weighed during the period of eight months prior to the fire; just describe to the jury how the tubs would appear so far as the quantity of coal was concerned, whether the coal would be above or below the sides of the tubs?

\* \* \* \* \*

A. Well, I should judge, just as I said before, that the tubs coming up to me apparently they looked a little bit heavier when they went on the scales than they did otherwise because naturally looking at them more on the scales perhaps made me think so.

I worked on and off for the Western Fuel Company for about 6½ years after the fire. My last work for them was 2½ years ago on the "Korea." My work was of the same character as before the fire, namely, dumping. I had the same opportunities for observation as before the fire.

Q. What was the practice pursued by the Western Fuel Company after the fire with reference to putting coal in tubs which were weighed as compared with the quantity of coal placed in tubs which were not weighed; in other words, would your testi-



(Testimony of Frank McKenna.)

mony be the same?

A. Well, I will explain that myself now in a second. Just as I say, when the tub would be on the scale we would naturally take more notice to it because when the tubs are coming up, it is just, "there she goes" and you dump it, and down she goes again. When I went on the scale we would naturally take notice—not that it concerned us in the least, but we just may have looked down to see the fellows pulling them on the [1022—963] scale. It was about the same.

Q. Was the same procedure followed, so far as the signal was concerned that was given by the hatch-tender?

A. It is just as I said,—he would say "on the scales," "two men come up" and they would land their tub and come up to help pull the tub on the scales.

Q. The two men would come up before the tub was hoisted from the hold?

A. Oh, yes, there would be no delay, they would go up immediately.

Q. And how many minutes would be occupied in weighing a round of four tubs, when four tubs were weighed?

A. A round of four tubs would not take more than 6 minutes.

Q. 6 minutes to weigh a round of tubs?

A. Maybe 7 minutes for four tubs. It was according to the barge's list; sometimes they would

(Testimony of Frank McKenna.)

miss the rope and would have to pull a little heavier or a little harder.

\* \* \* \* \*

Mr. ROCHE.—Q. Would you, upon occasions, see the quantity of coal that was contained in the tubs which were not weighed?

\* \* \* \* \*

A. Oh, I have seen tubs coming up there with lumps sticking up a foot or more.

(There was no cross-examination of this witness.)

[1023—964]

[Testimony of J. F. Barfield, for the Government.]

J. F. BARFIELD, a witness called for the United States and sworn, testified as follows:

Direct-examination by Mr. ROCHE.

I live now, and have lived for about 11 years, in San Francisco. I have been for nine years and am now employed as an assistant weigher in the custom service. During the first three years of that service I frequently weighed coal; during the last six years I have weighed merchandise generally, including some coal. I was quite often on the Folsom Street bunker during the first three years, and would be located then in the scales-house. During that period I once had occasion to go down from the scales-house to the floor of the bunker where the tracks are and where the cars run, and I saw an employee of the Western Fuel Company shoveling coal, that I was quite sure had not gone over the scales, down into a pocket. He was shoveling coal from the

(Testimony of J. F. Barfield.)

flooring near the car tracks. That is the only occasion that I can recall where I had any difficulty in regard to that.

In weighing coal in the scales-house I face in a westerly direction, away from the hoppers or towers. The distance between the first hopper and the scales-house would vary, depending upon where the hatch was on the ship they were discharging from, but, I should say, approximately, 50 feet would be the greatest distance. If I were to turn and face east it would not be possible for me to see very far under the first hopper. If coal were being discharged from the remaining three hoppers, or from any of them, into the cars and were permitted to fall from the cars into the bunkers below, a weigher standing in the scales-house and facing east could not see the coal drop down into the bins below. So, also, it would not be possible for a weigher standing in [1024—965] the scales-house and facing easterly, toward the hoppers, to see a man shoveling coal from any part of the framework located near the upper part of these bunkers into the bins below, if such shoveler were behind the first hopper. So, also, it would not be possible for a weigher, located and facing as above stated, to see coal dropping into the bins or bunkers below from overflowing cars.

Cross-examination by Mr. MOORE.

As I have said, I frequently weighed on the Folsom Street bunkers during my nine years of service, The man whom I saw on one occasion shoveling coal

(Testimony of J. F. Barfield.)

that I thought had not been weighed down into the bunkers below had been recently employed. The foreman, Mr. Mayer, explained to me that he was a new man. Mr. Mayer reprimanded him after I had mentioned the matter at once to Mr. Mayer. That occurred, I think, about three or four years ago.

Cross-examination by Mr. McCUTCHEN.

In addition to the assistant weighers, there are custom-house weighers or custom-house inspectors in the employment of the Government. I have seen them around the Folsom Street bunkers while I was performing my duty there. In addition, there are employees of the Government styled "laborers" who go about from place to place where a dutiable cargo is discharged. I have seen them on the Folsom Street bunkers, but that was an uncommon occurrence. [1025—966]

[Testimony of **Arnold H. Freund**, for the Government.]

ARNOLD H. FREUND, a witness called for the United States and sworn, testified as follows:

Direct Examination by Mr. ROCHE.

I live now, and have been living for going on six years, in Oakland. I am now, and have been for the last nine years, an assistant weigher in the United States Custom Service. My duties are to weigh dutiable merchandise. During the first six or seven years of my service I should say that about 75 per cent of my time was devoted to the weighing of imported coal. I would be stationed mostly on the

(Testimony of Arnold H. Freund.)

barges in connection with rebate coal. It was, however, of frequent occurrence that I would be stationed on the Mission Street or Folsom Street bunkers weighing imported coal. The Mission Street bunker was torn down about three years ago, I think. The scales-house prior to the dismantling of the bunker was located about the center thereof. The offshore bunkers were out at the east end. They were at the extreme end of the dock. The inshore bunker was located on the north side, clear to the end, both east and west of the scales-house. The coal would be discharged upon that dock west of the scales-house; there were four towers west of the scales-house. The weigher faced east, that is, toward Oakland. The discharging operations were at his back.

The scales-house at Folsom Street is at the shore end of the dock. The hoppers are east of the scales-house. The weigher faces west.

At both bunkers, Folsom Street and Mission Street, the weigher faces so that his back is toward the towers or hoppers.

I am familiar with the rod which depends from the beam [1026—967] on the Mission Street scales where the coal is weighed. During that part of the time when I was employed as assistant weigher upon the Mission Street bunker, that rod was exposed. I can't say for what length of time, however. If I remember, when I worked there the first few times the rod was exposed; then I was away for a time, and when I came back I found they had boxed it in.



(Testimony of Arnold H. Freund.)

I am acquainted with the defendant, Eddie Mayer, and have known him since I have been in the service. I recall an occasion when he was located in the scales-house at the Mission Street dock and permitted his feet to come in contact with that exposed rod. I don't know exactly when that occurred, but I think it was just before the fire of 1906. He was keeping check with me in the scales-house which is his ordinary duty. He would sit on the north end of the scale. I sat on the south end where the hanger beam was. We were both facing east. There is a table underneath the beam. Both of us used the table in keeping our books.

Q. Just go ahead and relate all the circumstances connected with this occasion to which you are testifying.

A. Well, as he stepped out, as I say—I don't know what for, but to tell the motorman where to distribute the coal to that was going to various pockets, why, I took a piece of chalk out of my pocket, and I rubbed this rod, and when he came back and sat down, and after I had weighed a load, he sat back and put his feet up on the desk, kicked his chair back, and I says, "Eddie," I says, "Where did you get the chalk on your pants?" and he says, "Darned if I know." "Well," I says, "you want to keep your leg away from the rod and cut out your monkey business," and he laughed and called me a lobster, or something, I have [1027—968] forgotten which, and I simply told him that; that was the end of it, I never bothered with him after.

(Testimony of Arnold H. Freund.)

Q. Did you afterward require him to sit away from that rod?

A. I cautioned him to keep clear of it.

Q. Do you remember how soon after that the rod was boxed?      A. No, I can't tell you.

I am familiar with the layout of the bunkers at the Folsom Street dock. The first tower is anywhere from 17 to 30 feet from the scales-house. The weigher in the performance of his duties is, while coal is being discharged into the hoppers and from the hoppers into the cars and while the cars are being run upon the scales, required to keep his eye upon the beam. The weighing is more or less rapidly done. If the weigher were to turn around and face easterly, he would only be able to see the first hopper. He could not see coal being discharged from the hoppers into the cars and from the cars into the bunkers below, even though he looked easterly. There is considerable noise made in discharging the coal into the hoppers and that noise continues always.

I have many times, during the time that I have acted as assistant weigher on the Folsom Street bunker, observed coal being shoveled from the framework or runway into the bins below. I complained to the man himself who was doing that, and, another time, I told Mr. Mayer and he went down and scolded the man in my presence. The operation was not afterward repeated that I saw. I did not again see coal shoveled into the bins below on that ship, but I afterward saw them doing that on

(Testimony of Arnold H. Freund.)

other ships, but I cannot say how many times. I made several reports in regard to the work to Mr. Wooster. [1028—969]

I have frequently weighed drawback coal. I think it was from 1904 or 1905 until the time when they took off the duty. Such coal would be weighed from the barges. I have worked often on the barges in the daytime and sometimes at night-time. That is true with reference to practically all the barges operated by the Western Fuel Company. I have come in contact with the hatch-tenders and employees of the Western Fuel Company. I sometimes had trouble on these barges.

Q. I want you to go on and state to the jury what you have observed from time to time while you have acted as assistant weigher upon those barges weighing drawback coal so far as the filling of the tubs is concerned?

A. Well, I can state that it has been the usual thing to always have trouble; the coal shovelers if they knew you were going to weigh would load the coal up to the latch, right up as high as they could on the tubs; I would holler down the hatch to Mr. Parks—he was always clerking as a rule with us—he would kick about it and then I would go over the hatch and tell them that if they didn't quit it we would make them. I have also spoke to the hatch-tender and he has told them also. I have had tubs come up that were loaded so that when they came out of the hatch, or when I came to the hatch—we had orders not to stand over the hatch; our orders



(Testimony of Arnold H. Freund.)

from the chief weigher were to stand clear of the hatch and take the tubs at random, but when they knew I would weigh I have seen them throw on 3 or 4 or 5 shovels of coal to fill it up and I would let it go by, I would not weigh it.

Q. That is, upon occasions you have seen them put on 3 or 4 or 5 shovels of coal when they thought a tub was to be [1029—970] weighed?

A. Yes, sir.

Q. And you say that on some occasions you refused to weigh those tubs?

A. Yes, sir, I did; I would let them go by.

Q. Who determined when a weight was to be taken? A. I would.

Q. That is, when you were acting as weigher you would determine when a weight was to be taken; is that correct? A. Exactly.

Q. What, if anything, would you say to the hatch-tender?

A. When they would shove the tub out to the hatch I would say, "Frank" or "Dan," or whoever it was, "on the scales."

Q. Was it your practice to weigh the tubs in rounds or singly?

A. Sometimes in rounds, sometimes single, sometimes two at a time, sometimes three at a time.

Q. What was the common practice?

A. Random weights, one tub at a time.

Q. You say the usual practice was to weigh one tub at a time? A. Yes, sir.

Q. And not a round of tubs?

(Testimony of Arnold H. Freund.)

A. Well, it was according to what barge we were on. There was the barge "Nanaimo" and "Comanche," where the tub is away down in the skin of the ship, we have to leave them work 4 or 5 hours before we could get the skin clear for the tub in order to hang a tub and weigh it, and then of course we would have to take one or two rounds to catch up with our weights; we were required to take one weight in 15.

Q. You were referring now to what is known as a hanging scale or rod scale, are you?

A. Yes, exactly. The scale is up here on deck, and a long rod 10 or 12 feet in length hangs down the hatch and they hook [1030—971] it on a chain and hoist it until it is clear of the skin.

Q. How many barges to your knowledge were there upon which there were what you term a hanging scale?

A. The barge "Comanche" and the barge "Nanaimo."

Q. After either one of those two barges had been loaded with coal you say that it required some time before you would be permitted to take a weight?

A. Exactly.

Q. And that was because the tubs would be weighed upon the end of the rod and you would have to wait until they got down to the skin of the barge before a weight could be taken; that is correct, is it not?

A. Yes, sir.

Q. And it did sometimes occur, did it not, that 4 or 5 hours would elapse between the time that the

(Testimony of Arnold H. Freund.)

barge first commenced discharging and the time you could first take a weight?     A. Yes, sir.

Q. And then you would weigh a couple of rounds?

A. Yes, sir.

Q. And use the weight of the 8 tubs for the purpose of determining the quantity of coal which previously had been discharged?

A. Exactly. I wrote a couple of letters about that to the chief weigher and complaining about the unsatisfactory condition of it.

Q. Who was the chief weigher?

A. Mr. F. L. Wooster.

Q. You would indicate to the hatch-man, as I understand it, your desire to take a weight?

A. Yes, sir.

Q. And what, if anything, would the hatch-tender do?

A. Give the signal to the engineer, or sometimes call up two men out of the hatch so that they could pull it on the scale.

Q. It is a fact, is it not, that one or two men would have to be called up from the hold of the barge in order to weigh [1031—972] the coal, when you were not weighing the coal upon these hanging scales?     A. Exactly.

Q. That is correct, is it not?     A. Yes, sir.

Q. What is your testimony as to whether the ordinary practice indulged in was to weigh a round of tubs instead of a tub at random?

A. Well, as I said, sometimes we weighed one,

(Testimony of Arnold H. Freund.)

sometimes two in succession, sometimes three and sometimes four.

Q. Did you weigh a random tub as often as you would weigh a round of tubs, or would you weigh a round of tubs more frequently than you would weigh a random tub?

A. I guess I weighed about evenly; I have taken a round as often as I have taken it at random. It is entirely according to conditions.

Q. How long would it take to weigh a round of four tubs, where the tubs had to be weighed on the platform scales? A. 3 or 4 minutes.

Q. You say 3 or 4 minutes to weigh a round of tubs? A. Yes, I should judge so.

Q. Did it require as much as 15 minutes?

A. No, I cannot say, unless it has been at times when the barge has a bad list, an inshore list, so that they cannot get the scale—they have to pull the tub out from the center of the hatch clear to the edge of the scale and if the barge listed inshore they could not pull it in, it would be hard work for them to get it over.

Q. Upon occasions when you would notify the hatch-tender that you wanted to weigh a round of tubs and a round of tubs would be weighed by you what, if anything, did you observe the shovellers down in the hold of the barge doing with reference [1032—973] to the quantity of coal which would be contained in the tubs which you would be called upon to weigh?

A. Well, on a few occasions I have caught them

(Testimony of Arnold H. Freund.)

heaping the tubs and I would refuse to weigh them. As a rule I have called them down pretty hard and threatened them that I would ring up Mr. Mills or somebody and get a gang of men who would do as they were told; as a rule they gave me pretty good weight.

Q. Did you ever compel them to remove coal from the tubs? A. Yes, sir.

Q. Was that a frequent occurrence?

A. No. As a rule I would let the tub go up but refused to weigh it.

Q. Was it a frequent occurrence that additional coal would be placed on the tubs that they expected you to weigh?

Mr. McCUTCHEN.—That is calling for the operation of the mind of some man whom we don't know.

Mr. ROCHE.—I will withdraw the question.

Q. How often after you would call for weights, would this additional quantity of coal be placed in the tubs?

A. Well, as a rule when I called for a weight I watched them pretty close, that they did not do it. If they didn't see me near the hatch, I wouldn't know whether they did or not. I have caught them once or twice.

Q. How often when you came to weigh tubs of coal would you notice that the tubs contained more coal than they should have contained, and you would direct the tubs to go up and you would not weigh them; how often did that occur?



(Testimony of Arnold H. Freund.)

A. I could not tell you; very often.

BE IT REMEMBERED that, thereupon, the following testimony was given and that the following proceedings occurred: [1033—974]

Q. Do you recall an occasion when you weighed a barge out short? A. I do.

Q. When was that?

A. I have forgotten the date of it; sometime in 1908, I believe.

Q. Were you watching the tubs very closely on that occasion? A. I was.

Q. You say you were watching the tubs very closely? A. Yes, sir.

Q. What, if anything, occurred after you had completed weighing out that barge; when did you next get an assignment to weigh drawback coal?

A. Sometime after.

Q. How much time elapsed, if you can recall?

Mr. McCUTCHEN.—We object to that. What is the inference to be drawn from that?

Mr. ROCHE.—We have a right, may it please the Court, in a case such as this, to show what the facts are, to show what the situation was upon this particular occasion and to ascertain when he was next called upon to act as an assistant weigher in weighing drawback coal.

Mr. McCUTCHEN.—It is intended that an inference of some improper conduct on our part shall be drawn from that, and I submit that it is unfair and that no such inference is properly deducible.

(Testimony of Arnold H. Freund.)

The COURT.—The objection is overruled.  
[1034—975]

Mr. McCUTCHEN.—We note an exception.

A. I don't know, but some few months as far as I can recollect. It was quite a while; I don't recollect the date of it but I know I didn't get down there for some time after.

I recall an occasion when there was some trouble with a link connecting two of the cars on the Folsom Street bunker. That occurred, I think, around 1906, but I don't recollect whether it was before or after the fire. It was close to that time. I do not recall the particular ship that was then being discharged.

Q. I want you to go on and state in your own way what that transaction was.

A. Well, there are four cars worked up there and they are weighed two at a time; they are all linked together, one motor-car. I was weighing, and I think at that time Mr. Delaney was clerk for the Western Fuel Company. Having weighed the first two cars of a train, I think the weight went in the neighborhood of something like 17,500 and as they pulled off and they weighed the second two, I saw that the cars were heavily laden and I thought that there must have been something wrong with the weight, so I insisted on the motorman bringing those cars back and reweighing them.

Q. How did you happen to look at the cars on that occasion?

A. You can't help it; here is the run-off and they

(Testimony of Arnold H. Freund.)

come out right underneath the scale-house. (Indicating.)

Q. (Indicating.) And you did, upon that occasion observe that the two cars which you weighed were pretty well laden with coal?

A. Yes, and I had the motorman back up his [1035—976] cars, and I reweighed them, and where they first weighed something short of 18,000, the next weight was about 25,500.

Q. The same two cars?

A. The same two cars exactly. I could not understand it. They have a little 'phone in the house there connected with their office down below, and I rung up Mr. Miller, and I said "Billie, will you ring up the custom-house and have Mr. Wooster come down"; he said, "What is the matter?" I said, "There is something wrong, I am getting the worst of it up here, have Wooster come down." So Mr. Wooster came down with Mr. Jim Smith and Mr. Mills and came up and I told them and they couldn't seem to understand how it could be. I went down below with them and Mr. Delaney done the weighing upstairs.

Q. Before you proceed with your statement let me ask you this: The motor and the train of cars are headed as it comes upon the scales in a westerly direction? A. Yes, sir.

Q. And you ran the first two cars upon the scales; is that correct? A. Yes, sir.

Q. And took the first weight? A. Yes, sir.

Q. Then you ran the rear two cars upon the scales



(Testimony of Arnold H. Freund.)

and weighed those two cars?     A. Yes, sir.

Q. Then, as I understand it, you required the cars to be pushed backward, that is, in an easterly direction, and you again weighed in that way the first two cars?     A. I did.

Q. After Mr. Wooster, the defendant, James B. Smith, and Mr. Mills reached the scene of activities, state what occurred.

A. They came up and they looked it over and could not understand it, and finally I believe they rang up and got the Fairbanks Scale man down, and Mr. Wooster told me to keep ahead, go ahead and weigh so as not to dely the game; and in the meantime [1036—977] he went on the scale and he found the scale was perfect; then we discovered that there was a short link between the second and the third cars that when the first two got on the short link in some way held the cars up a little on the scale in order to make a difference of somewhere around 2,000 lbs.

I believe this link was shorter than the links between the other cars. I examined the link myself. I should imagine it had been in service some time. I don't think it was a new link, but I didn't notice particularly. I cannot describe the link in any way. I did not notice any peculiarity about it. Mr. Mills or Mr. Smith, I don't recollect which, immediately ordered that a longer link be put in. I have no idea how long that particular link had been used. I had been weighing that train of cars right along for some time. I have weighed those cars over one scale and then tried them over the north scale. I used to test

(Testimony of Arnold H. Freund.)

the scales that way. I cannot say I did that with this particular train, however. I do not remember. I could not give the length of that link. So far as I can remember, it might have been six inches. The thickness might have been somewhere about three-fourths or seven-eighths of an inch.

(There was no cross-examination of this witness.)

**[Testimony of Albert E. Aitken, for the  
Government.]**

ALBERT E. AITKEN, a witness called for the United States and sworn, testified as follows:

Direct Examination by Mr. ROCHE.

I now live and have lived for a number of years in San Francisco. I am not employed just now, but I have been a ship's [1037—978] clerk for over forty years. In that capacity I would look after the interests of the ship owners in the discharge of the cargo. I have acted in that connection at this port of San Francisco very frequently. It was somewhere about the time of the earthquake that I last acted as a ship's clerk in connection with the discharge of imported coal by the Western Fuel Company. I think it was just a little before the earthquake. I remember the circumstance of the Western Fuel Company being the successors of the Rosenfeld Company, and, if that was two years before the fire, I must have acted as ship's clerk upon ships being discharged by the Western Fuel Company then. Those boats were mostly discharged at Mission No. 2. I am acquainted with the defend-

(Testimony of Albert E. Aitken.)

ant, Eddie Mayer. I remember him well during the two years before the fire. In the performance of my duties I would be located right in the scales-house. I would frequently take walks along the stringer, however. The bunkers were open on top most of the time until I made a complaint about them. I noticed on such occasions as I walked down the stringer, if the coal cars were overloaded, the coal would naturally spill off the top and go down in the bunkers below. That occurred whenever I had to work there. Sometimes it would take several days to discharge a ship. They would discharge from two to three hundred tons a day, or, if they worked more hatches, seven or eight hundred.

Q. Now, how often during the discharge of a boat, and while you would be working as ship's clerk during the two years to which you have referred, and referring exclusively, of course, to the activities of the Western Fuel Company discharging these boats, would you see the cars overflowing, and the coal falling down [1038—979] into the pockets below?

A. Every time a tub was dumped, or they wanted to fill the car, you know, some coal would spill over the side, or roll off the top.

Q. Would the same quantity of coal roll off each time, or would there be sometimes a less amount and other times a greater amount?

A. Sometimes there would only be one or two little pieces, and other times there would be perhaps a bucketful.

Q. How often do you think you saw that, Mr. Aitken?

(Testimony of Albert E. Aitken.)

A. I saw that almost daily when I was working there.

Q. Were complaints made by you to officials of the Western Fuel Company?

A. No, I made a complaint to the chief weigher—yes, excuse me, I think that I did complain to the clerk that was weighing the coal at the time.

Q. Were those complaints made many times?

A. Yes, frequently.

Cross-examination by Mr. MOORE.

I acted as a ship's clerk for about 40 years, and sometimes I would see coal down there at Folsom Street falling off the cars into the bunkers below when there was too much coal running out of the chutes. I complained to the United States Weigher about it and then they fixed temporary planks to put under the hoppers while the ships were being discharged. That was at the Mission Street dock. When the cars thus overflowed, it was because of too much coal coming out of the hopper by reason of a lump getting caught in the chute.

**[Testimony of William J. Delaney, for the Government.]**

WILLIAM J. DELANEY, a witness called for the United States and sworn, testified as follows:—  
[1039—980]

Direct Examination by Mr. ROCHE.

I live now, and have lived for two and one-half years, in Oakland, and I am at the present time Deputy Collector of Internal Revenues, having been

(Testimony of Albert E. Aitken.)

in the revenue service for about five years. From 1903 to 1905 I was assistant weigher of customs and weighed coal along with other general merchandise. My station in this weighing for the most part would be on the Mission Street and the Folsom Street docks. In 1905 I worked for the Western Fuel Company for a total time, I think, of about 30 days, but not consecutively. I was checking weights for the Western Fuel Company in the scales-house where the coal was being weighed by the custom weigher. The scales-house at Mission Street, as I recall, was located in the center of the bunkers. I do not have any knowledge of any coal being discharged into the bunkers without being weighed. Most of the time that I was checker for the Western Fuel Company I was employed upon the Folsom Street dock. I recall an incident which occurred at the Folsom Street bunkers while I was employed there, when there was some claim made that inaccurate weights were being taken. The assistant weigher at that time was Mr. Freund. Some one or other of us noticed that the scale wasn't weighing properly. There was something wrong with the way the scale was registering so we took steps to have the scales fixed. Mechanics from the Fairbanks-Morse people came down, accompanied by Mr. Wooster, the chief weigher, and we knocked off work until the scales were put in order. There was nothing more particularly the matter with the scales than that one of them did not weigh properly.

I acted as assistant weigher for the Government



(Testimony of William J. Delaney.)

on the [1040—981] Folsom Street dock at various times from 1903 to April, 1905. Whether in 1905 itself I acted as weigher or assistant weigher upon the Folsom Street dock, except when employed by the Western Fuel Company or by some ship owner, I cannot say. After I left the Government service in 1905, I was not again employed by the Government until 1907 when I went into the Internal Revenue Department. Then I had nothing to do with the docks. I never acted as a ship's clerk on the Folsom Street dock except for the Western Fuel Company. I remember acting as a ship's clerk for a boat owned by George W. McNear, but that was at Mission Street dock.

During the time when I was acting as checker for the Western Fuel Company at Folsom Street, I had occasion to observe the manner in which cars were loaded with coal. Occasionally it would happen that a car would be overloaded and some of the coal would fall off into the bunkers below.

The occasion when I worked for Mr. McNear in the discharge of a ship at the Mission Street dock was after the earthquake and before I entered the Internal Revenue Service. I do not remember the name of the ship. What occurred on that occasion was this: I had quite an altercation with the representative of the Western Fuel Company about the manner in which the coal was being weighed on the deck of the ship on small scales. The coal was placed upon the scales in tubs.

Q. You say it was all weighed in tubs on scales;

(Testimony of William J. Delaney.)

state what, if anything, you observed with reference to the discharge of that ship while you were acting as ship's clerk?

A. Well, I noticed that when a tub was called for by the United States weigher, that oftentimes it did not seem to be [1041—982] representative of the total amount of coal that was being discharged, and I had an altercation with Mr. Mayer, the clerk for the Western Fuel Company about his going into the hold of the ship.

Q. Do you remember how long it took to discharge that ship?

A. Well, about three days, I think.

Q. How frequently did you notice that the tubs which were weighed by the customs weigher did not represent the average tub that was hoisted?

A. Well, it did not happen very often because I did not permit it to happen.

Q. You say you did not permit it to happen?

A. No, I did not.

Q. What trouble did you have over the quantity of coal that was contained in these tubs?

Mr. McCUTCHEN.—I object to that as immaterial, irrelevant and incompetent. The witness has stated what his observation was. What his trouble was has nothing to do with this case.

The COURT.—Not unless it was some matter called to the attention of these defendants, and something said in connection therewith by these defendants.

Mr. ROCHE.—It would seem to us it would be

(Testimony of William J. Delaney.)

admissible for this reason, if your Honor please. The witness has stated that it did not occur very often because he did not permit it to occur. We desire to ascertain what did occur, which called for this action on his part.

Mr. McCUTCHEN.—He has already testified to that.

The COURT.—He has testified in a general way, yes; the objection is overruled.

Mr. McCUTCHEN.—An exception. [1042—983]

A. Well, I objected to Mayer going to the hold of the ship for the reason that I did not think—

Mr. McCUTCHEN.—We object to the witness' reason, your Honor.

The COURT.—Yes, the objection is sustained.

Mr. ROCHE.—Q. Let me ask you the specific question, Mr. Delaney; you remember the tubs that were hoisted for the purpose of being weighed, do you not?

A. Yes, sir.

Q. Now, to what extent were the tubs which were hoisted for the purpose of being weighed filled with coal?

A. Well, sometimes they were not representative of the total number of tubs hoisted.

Q. What do you mean by not representative of the total number of tubs hoisted?

A. Well, the tub that was weighed would sometimes not weigh as heavy as the general average.

Q. How frequently did that occur? How frequently did it occur that tubs were brought up for the purpose of being weighed which did not contain

(Testimony of William J. Delaney.)

as much coal as was contained in the average tub?

A. Well, this happened several times until we had a big row about it, and then it stopped. I could not say the number of times that that happened.

Cross-examination by Mr. McCUTCHEN.

I could not be positive, but I rather think that the name of the ship was the "Germanicus" on the occasion that I have mentioned when there was trouble with the scales on the Folsom Street dock during the discharge of a vessel. [1043—984]

[Testimony of J. L. Bley, for the Government.]

J. L. BLEY, a witness called for the United States and sworn, testified as follows:—

Direct Examination by Mr. ROCHE.

I now live, and have lived practically all my life, in San Francisco. For 27 years I have been and now am a custom-house broker and a member of the firm of C. D. Bunker & Company. I recall a ship known as the "Dumbardon." I recall in a hazy sort of way the discharge of a cargo of coal from her during the latter part of 1905. I remember making a statement to Mr. Sullivan and Mr. Roche about these facts, some months ago. There were several vessels whose names were similar to that of the "Dumbardon," and I cannot precisely identify the ship being discharged on this particular occasion. Our firm did not represent the captain of the ship.

Q. Do you recall during the latter part of 1905 making an examination of any portion of the scales located upon the Folsom Street dock under the con-

(Testimony of J. L. Bley.)

trol of the Western Fuel Company?

A. I visited the scale; it was late in the summer or early in the fall.

Q. You remember the circumstance?

A. Yes, I remember the circumstance that you are referring to.

Q. Have you any recollection as to whether that occurred in the year 1905 or not?

A. Yes, I would say, 1905.

Q. At whose request or for what purpose did you visit the scales at that time?

\* \* \* \* \*

A. I am not certain whether it was at the request of J. J. Moore [1044—985] & Company or H. M. Newhall & Company.

Mr. ROCHE.—Q. Was J. J. Moore & Company the consignee of that vessel, of the cargo of that vessel?

A. I don't think so; I think they were acting as agents.

\* \* \* \* \*

Mr. ROCHE.—Q. You say you did make an examination of the scales at that time?

A. Well, I would not call it an examination, Mr. Roche, because I had never visited the waterfront practically on a mission of that kind before; I looked at them; I was only there about 15 minutes. I saw the scales, yes, if that is what you want to know, yes, I saw the scales.

Q. Was anybody with you at the time?

A. Yes, sir, the chief weigher.



(Testimony of J. L. Bley.)

Q. Upon how many occasions did you visit the scales?

A. I visited the scales once on this occasion.

Q. And did you again visit the scales upon a later occasion?

A. No, I did not visit the scales; I visited the bunkers.

Q. Upon this particular occasion you say that the chief weigher was with you; are you referring to Mr. Wooster?

A. He was the chief weigher at the time.

Q. What part of the scales did you examine or did you look at, to use your language?

A. Well, it was that portion of the scales where the small cars ran over.

Q. You say that portion of the scales that the cars went over; do you mean the platform?

A. The platform-scale, yes, sir.

Q. Did you examine the surface of the platform, or did you go underneath the platform?

A. If my memory serves me I examined both; as you call it, I examined both the surface and [1045—986] a portion of the underneath part.

Q. How did you gain access to that portion of the scales located immediately underneath the platform?

A. I don't know whether they were open on account of some repairs or whether they had been opened; that was eight years ago.

Q. You are acquainted, are you not, with most of the defendants in this case? A. No, sir, I am not.

Q. Do you know Mr. Smith?

(Testimony of J. L. Bley.)

A. I have met Mr. Smith, yes.

Q. Just go on and state what you observed after entering the space which is located immediately below the platform of the scales?

A. Mr. Roche if I could refresh my memory up a bit I might be able to tell you more about that. It was eight years ago, and it was only a 15 or 20 minute transaction, and I have been through thousands of them—I don't mean similar transactions, but thousands of other transactions, and in practically every part of the world.

Q. What do you mean, Mr. Bley, to refresh your recollection from what?

A. From a drawing of the scales.

\* \* \* \* \*

Q. You say you did go into this space which was located below the platform of the scales on the Folsom Street dock; you recall that, do you not?

A. I recall that, yes, sir.

Q. Do you recall observing any uprights located underneath the platform scales? A. Yes.

Q. You are certain about that, are you?

A. Well, I am certain—I remember there were uprights there; I remember that. [1046—987]

Q. Do you recall making an examination of that portion of the scales for the purpose of ascertaining whether the platform of the scales would come in contact with any one of these uprights or with anything underneath the platform? A. I did.

Q. Now, just go on and tell the jury what you saw?

A. Well, I don't like to make a definite statement

(Testimony of J. L. Bley.)

because it is eight years ago and there might be some little detail I might not be correct in. To the best of my knowledge and belief there was one of the up-rights that appeared to have had the platform resting upon it.

Q. Do you recall examining the remaining three uprights? A. No, I do not.

Q. Is your recollection to-day the same as it was at the time you made a statement to Mr. Sullivan and to myself? A. It is the same.

Q. You don't think there is any difference in it?

A. No, no difference.

Q. Let me ask you, haven't you a recollection of examining the tops of the other three uprights underneath these scales for the purpose of ascertaining, if I may refresh your recollection, whether there was any dust upon the tops of these other uprights, or not?

A. It is my impression that there was one of them on the same side that showed that the scale had touched it that had dust on it. That is my impression.

Q. But it did show that the scale had come in contact with it?

A. On the upright I saw the dust on?

Q. Yes.

A. No, I don't think the scale came in contact with that one; it came in contact with the one I just called your attention to. I remember that there was one of them that the scale came in contact with. [1047—988]

(Testimony of J. L. Bley.)

Q. Have you any recollection at this time as to how many uprights there were located under this platform? Do you remember there being an upright at each one of the corners of the platform?

A. My impression is there were four.

Q. Now, eliminating from consideration the particular upright with which you say the platform came in contact, do you recall the space which you observed existed between the remaining three uprights and the platform of the scales? How many inches above the tops of those other three uprights was the platform? Haven't you any recollection upon that subject at all?

A. Why, it is very hazy as to the distance between the platform and the top of the upright.

Q. I am not talking now about the particular upright that you say the scale came in contact with, but I am talking about the remaining three uprights. Do you now recall the space which existed between the tops of the other three uprights and the platform? A. I do not.

Q. Do you recall whether you examined the tops of these three uprights for the purpose of ascertaining whether any part of the platform of the scales had come in contact with any one of those uprights?

A. My impression is that after looking at the other upright on the same side as the one that had been touched by the platform above the one that was out of order, or whatever it was, that I did not examine anything further, and I called the weigher's attention to it.

(Testimony of J. L. Bley.)

Q. Had the top of the upright which apparently had come in contact with the platform of the scales been worn down to any extent, and if so, to what extent? [1048—989]

A. Well, it was to some extent; I cannot recall to what extent it was worn down, but it was to some extent; that is, it was visible to the naked eye that the platform had rested on it.

(Witness continuing.) The upright that I examined had apparently been worn down at a recent date. I remember the chief weigher contended that it must be of recent origin but my contention at the time, if I remember correctly, was that it might have been for some period past.

Q. Do you recall whether the upper part of this upright was removed?

A. Mr. Roche, I will have to state that all I know about that is what was told me by Mr. Wooster.

\* \* \* \* \*

Q. Do you recall whether the block which you did see at a subsequent date corresponded with the upper portion of the upright as you observed it while under the scales?

\* \* \* \* \*

A. The block that was shown me by Mr. Wooster corresponded with that portion of the upright.

Mr. ROCHE.—Q. Where was the block at the time it was shown to you by Mr. Wooster, if you recall?

A. It was probably at the custom-house.

Q. Your recollection is not very definite upon that subject, that is, as to the exact place? A. No.



(Testimony of Michael J. Costello.)

Q. Do you recall whether there was any dust of any kind upon any part of the top of this upright which apparently had come in contact with the scales?

A. I believe there was.

Q. Do you recall the dimensions of the upright? I don't mean so far as height is concerned, but the width and the thickness of it.

A. My impression is it was 6 by 6.

Q. Are you at all certain, Mr. Bley, that there was any dust of any kind upon the top of this upright, which apparently had come in contact with the scales?

Mr. McCUTCHEN.—I object to that, if your Honor please. The witness was asked what his impression was and he stated it and I submit that counsel has no right to cross-examine his own witness in that fashion. [1049—990]

\* \* \* \* \*

A. I believe there was.

Mr. ROCHE.—Q. What I am trying to get at, Mr. Bley, is, is that a definite recollection?

A. No, sir, I could not state definitely.

(There was no cross-examination of this witness.)

(The entry made by the American Schooner "Americano" which was the subject matter of some testimony given by witnesses John W. Smith and Enlow was here introduced in evidence as U. S. Exhibit No. 150. Counsel for the prosecution directed the attention of counsel for defendants to the fact that a shortage appears of about 32 tons, the con-

(Testimony of Michael J. Costello.)

sumption entry showing the cargo to be 1291 tons bituminous coal, valued at \$3369.08, and that the ascertained or out-turn weight was 1259½ tons.)

**[Testimony of Michael J. Costello, for the  
Government (Recalled).]**

MICHAEL J. COSTELLO, a witness recalled for the United States, testified as follows:

Direct Examination by Mr. ROCHE.

I have already been examined as a witness in this case. I am familiar with the contents of U. S. Exhibit No. 125, Table C. Since that exhibit was introduced in evidence, I have made comparison between the items in the exhibit and the entries in the books kept by the defendant Mills, and have likewise traced back every item contained in each one of said books and compared those items with the entries contained in U. S. Exhibit 125, Table C. The number of barge loads actually shown by Table C, if I remember correctly, is 486. In tracing back the entries appearing in Exhibit "C" and comparing them with the books of defendant Mills, I discovered certain inaccuracies, [1050—991] namely, 20 out of 486 barge clearances. The paper which is now shown me is a table compiled by me after making the examination to which I have just testified. It accurately, correctly and truly sets forth the aforesaid inaccuracies existing in Table C. There were six entries in the books of the defendant Mills which I could not explain and which I could not understand. They were clerical errors. The statement now shown

(Testimony of Michael J. Costello.)

me and entitled, "A satisfactory check cannot be had on the following items owing to irregularities in barge books" comprises the six items to which I have just referred. (Counsel for the prosecution here read said last-mentioned statement in evidence as follows: "Exhibit 'C,' page 18, Date April 16, 1907, barge 'Melrose,' page 30, May 16, 1908, barge 'Melrose'; page 30, June 1, 1908, barge 'Nanaimo'; page 46, January 5, 1910, barge 'Ruth'; page 62, June 7, 1911, barge 'Theobold'; page 63, July 17, barge 'Comanche.' ")

With the exception of the above six items, the table to which my attention was first directed correctly sets forth all the discrepancies existing between U. S. Exhibit 125, Table C and the books of the defendant Mills.

Q. The figures shown in Exhibit "C" are given in the barge book under the date of discharge or clearance; is that correct?

A. The date of final clearance of the barge.

Q. Now, without going over each item contained in the dock book, or diaries kept by the defendant, Mills, and comparing these items with the items contained in Table C, did you make a calculation for the purpose of determining the additional coal that was checked in the barges referred to in Exhibit "C," and [1051—992] which quantity of coal is not contained in Exhibit "C"? A. I did.

Q. Does Exhibit "C" correctly set forth all coal checked out of or discharged from the barges?

A. The same discrepancy occurs in the discharge

(Testimony of Michael J. Costello.)

as in the receipt, in Exhibit "C."

Q. How do you mean the same discrepancy occurs in the discharge as in the receipts?

A. The same amount of coal was dropped on each side, on the receipt and delivery side, so that the overage, the number of tons overage, is not affected.

Q. That is, there would be the same overage, except you would have to add to the quantity of coal checked in, the amount of discrepancy and likewise add the same quantity to the amount of coal checked out?

A. That is it.

Q. So that the only figures that are affected would be the receipts, the quantity of coal checked out and the percentage of overages. Is that correct?

A. That is correct.

Q. I would like to have you take this statement and testify to the exact tonnage of coal checked into the barges.

A. You mean altogether, the entire Exhibit "C"?

Q. Altogether? A. 595,492 tons.

Q. What was the quantity of coal which had been eliminated from the figures set forth in Table C?

A. 31,732 tons, 1618 pounds.

Q. The figures which you gave us just a moment ago, in response to a question put by me to you, asking you to state the total quantity of coal checked into these barges, contains the figures which you have just given us. Is that not true? A. Yes.

Q. In other words, that was the total quantity of coal? [1052—993]

A. That is the correct total, including the excess.

(Testimony of Michael J. Costello.)

Q. What was the quantity of coal as shown by Exhibit "C" to have been discharged from the barges? A. 596,982 tons, 1266 pounds.

Q. Now, add to that figure the excess coal which, in fact, was discharged from those barges as shown to you upon comparing the figures contained in Table C with the figures contained in these dock books; what is the total quantity of coal discharged from these barges during the period of time covered by that exhibit? A. 628,713 tons, 644 pounds.

Q. Making an overage of how many tons and pounds? A. 33,223 tons, 542 pounds.

Q. That was the quantity of coal which according to the book kept by the defendant, Mills, was discharged out of the barge, or out of the barges, in excess of the amount shown by his books to have been checked in or discharged into the barges: Is that correct? A. Yes.

Q. Will you let me have that table for a moment, please. Do you recall the percentage of overage as that percentage was shown by Exhibit "C"?

A. Yes, it was 5.89 per cent.

Q. 5.89 per cent? A. Yes.

Q. Now, did you calculate the percentage of overage upon the figures ascertained by you to be correct?

A. Yes.

Q. That is after taking into consideration the discrepancies to which you have already testified, and including the additional coal which was checked into these barges, as well as the additional coal checked out of the barges? A. Yes.



(Testimony of Michael J. Costello.)

Q. What is the percentage of overage, considering all of the coal shown by the books kept by the defendant, Mills, to have been checked into the barges, as well as all of the coal shown [1053—994] by those books to have been checked out of the barges?

A. 5.57.

Q. 5.57 per cent? A. Yes.

Q. What is the difference between those two percentages? A. .32 per cent.

Q. .32 of one per cent: Is that correct?

A. Yes, that is correct.

Q. That is the difference in percentage as shown by the figures not found to be correct? A. Yes.

Mr. ROCHE.—I suppose, Mr. McCutchen, that we might offer this in evidence, instead of having this witness testify to these figures herein set forth. Is that all right?

Mr. McCutchen.—That is all right.

Mr. ROCHE.—We offer this in evidence as U. S. Exhibit No. 151, and it may be considered as having been read. Is that correct, Mr. McCutchen?

Mr. McCUTCHEN.—Yes.

(U. S. Exhibit 151 is in words and figures as follows:) [1054—995]

[U. S. Exhibit No. 151—Table Showing Discrepancies in Barge Books—List of  
Items of Exhibit "C."]

LIST OF ITEMS OF EXHIBIT "C"  
IN WHICH DISCREPANCIES OCCUR IN BARGE BOOKS.

Exhibit "C"	Page.	Date.	Barge	Total Receipts.		Total Deliveries		Amount Shown in Exhibit "C."	Excess of Receipts and Deliveries Over	Total number of Barge loads shown in Exhibit "C".....486	Number of the above showing incorrect receipts and deliveries.. 20
				Tons.	Lbs.	Tons.	Lbs.				
32	Aug. 13, 1908		Nanaimo	3917	560	3917	1067	2073	597		
33	" " "		Ludlow	1851	630	1915	790	1324	2146		
34	Sep. 11, "		Comanche	3666	1580	3778	919	2535	1168		
34	Oct. 2, "		Theobald	3047	1350	3101	79	1726	842		
	" 26, "		Nanaimo	2319	1840	2455	428	977	1903		
35	Nov. 7, "		Melrose	2613	990	2722	1731	801	2083		
38	Jan. 6, 1909		Comanche	3358	1120	3505	99	1306	428		
39	Mar. 18, 1909		Nanaimo	3570	70	3637	281	1717	958		
40	" 31, 1909		Comanche	2510	1430	2618	1665	1760	189		
40	Apr. 1, 1909		Melrose	2426	1090	2626	405	1545	631		
	Sep. 16, 1909		Ludlow	1759	1600	1779	128	1007	510		
49	Mar. 19, 1910		Comanche	1537	344	1647	887	906	664		
60	Apr. 6, 1911		Melrose	3421	1269	3468	2118	2039	1656		
64	Sep. 12, 1911		Nanaimo	2313	737	2411	1833	1463	1555		
64	" 14, 1911		Melrose	3613	1820	3785	1713	2907	1223		
67	Dec. 4, 1911		Comanche	2483	860	3002	977	1757	1451		
68	" 19, 1911		Theobald	2821	1960	2952	1562	1357	513		
74	Aug. 31, 1912		Comanche	3411	1650	3605	629	1875	992		
76	Oct. 24, 1912		Theobald	4333	1220	4390	86	1969	1452		
76	Nov. 20, 1912		Ruth	1314	2080	1381	582	679	817		
Total				56292	1800	58702	59	31732	1618		
										Total receipts by addition of excess as shown herewith—	
										563759..... 724	
										31732.....1618	
										595492.... 102	
										Overage ....33223.... 542	
										Percentage of overage.....5.57	
										Total deliveries as shown in "Ex- hibit C".....596982 1266	
										Add excess as shown herewith .....31732 1618	
										Correct Total Deliveries 628715 644)	

(Testimony of Michael J. Costello.)

I have made an examination of the books kept by the defendant, Mills, for the purpose of determining the quantity of coal stored in the steamer "Algoa" from the "Indra" and the "Thyra." I, myself, examined the same books for the purpose of ascertaining the quantity of coal discharged from the "Algoa" at a later date, and I examined the same books to see into what barges the coal was discharged, and for the purpose of ascertaining whether the barges thereafter cleared with an overage or a shortage.

(The attention of the witness was here directed to five sheets of paper.)

These five sheets clearly show, first, the quantity of coal shown by the books to have been discharged into the "Algoa" [1056—997] and the quantity of coal checked out of the "Algoa" and the overages and shortages appearing upon the barges at the time of their clearance. I did not, in making this statement, take into consideration the fact, if it be a fact, that any part of the cargo was used for fuel purposes upon the "Algoa," nor did I assume that any part of the cargo was left on board.

Mr. ROCHE.— \* \* \* According to this calculation, there was laden upon the "Algoa" from the steamship "Indra," 6248 tons, 652 pounds, and from the steamship "Thyra," 2,170 pounds, 1461 pounds; making a total of 8,416 tons, 2113 pounds. At the time of the discharge of the "Algoa," there was 8,535 tons, 657 pounds checked into the barges, creating an overage of 116 tons, 784 pounds, that is, there was

(Testimony of Michael J. Costello.)

116 tons, 784 pounds more coal checked out of the "Algoa" than there was apparently discharged into her. You will concede that that does not include the 50 tons which Powers testified were transferred to the bunkers, nor any of the screenings or coal left on board?

Mr. MOORE.—Just put it in, and we will meet it when we come to our case.

Mr. ROCHE.—All right. Now, the calculation also shows that there was laden upon the barge "Melrose" on July 22, 1908, from the "Algoa" 316 tons, 779 pounds, making a total, with other coal deposited upon this barge, of 2,832 tons, 991 pounds; that this coal was subsequently discharged into the "Manchuria," "Nippon Maru," "Mongolia" and "Korea," and that the weight of the coal as discharged into these four boats amounted to 2,966 tons, 379 pounds, or an overage of 133 tons, 1628 pounds; that on October 12, 1908, there had been discharged into the "Melrose" from the "Algoa," 227 tons, 1392 pounds, this with other coal [1057 998] which had been discharged on the "Melrose" amounting to 2,985 tons, 1,582 pounds. This barge coaled the "Hong Kong Maru," "Mongolia" "Crook" and "American Maru," and according to this calculation the quantity of coal checked or discharged into these four vessels amounted to 3,005 tons, 1805 pounds, or an overage of 20 tons, 223 pounds. In April, 1909, there was discharged into the barge "Melrose" from the "Algoa" 1014 tons, 1335 pounds, and no more coal—that is, there was no coal taken upon the "Mel-

(Testimony of Michael J. Costello.)

rose" from any other boat. That coal was subsequently discharged into the "Asia," the out-turn weight being 1031 tons, 1864 pounds, or an overage of 17 tons, 529 pounds. On June 3, 1909, there had been discharged into the barge "Melrose" from the "Algoa" 1042 tons, 1125 pounds, and 705 tons, 1170 pounds, making a total of 1748 tons, 55 pounds, no coal having been, according to these figures, discharged into the "Melrose" excepting this coal from the "Algoa." This coal was discharged into the "City of Para," "Peru," "Newport," "Nippon Maru," and "Pennsylvania." The out-turn weight of this coal was 1854 tons, 864 pounds, an overage of 106 tons, 809 pounds. July 2, 1909, there was deposited in the barge "Theobold," from the "Algoa," 1078 tons, 475 pounds, 924 tons, 972 pounds, 906 tons, 297 pounds, making a total of 2908 tons, 1744 pounds; according to these figures, no coal, excepting the coal from the "Algoa" was laden upon the barge. This coal was discharged into the "Nippon Maru," "China," "City of Sydney" and "Asia"; the out-turn weight was 2971 tons, 876 pounds, or an overage of 62 tons, 1372 pounds. On August 14, 1909, there had been discharged into the barge "Melrose" from the "Algoa" 880 tons, 1950 pounds; from the "Algoa," account of "Thyra," 1080 tons, 416 pounds, and on account of the "Thyra" 583 tons, [1058—999] 550 pounds, making a total of 2544 tons, 1641 pounds, no other coal having been discharged into the barge, according to these figures. This coal was discharged into the "China," "San Juan," "Asia,"



(Testimony of Michael J. Costello.)

"City of Para," "Nippon Maru" and "Pennsylvania." The out-turn weight was 2556 tons, 462 pounds, or an overage of 11 tons, 106 pounds. On July 6, 1909, there was discharged into the "Rough and Ready" from the "Algoa" 157 tons, 1486 pounds; this coal was checked into the "Asia" and the out-turn weight was 158 tons, 144 pounds, or an overage of 899 pounds. On July 3, 1909, there was discharged into the schooner "Shasta" from the "Algoa" 201 tons, 495 pounds. This coal was subsequently discharged into the "City of Sydney" and "Asia," the out-turn weight being 201 tons, 461 pounds, or a shortage of 34 pounds.

Now, the total output of barges loaded wholly or in part from the steamship "Algoa" was as follows: "Melrose" 2966 tons, 379 pounds; "Melrose," 3005 tons, 1805 pounds; "Melrose," 1031 tons, 1864 pounds; "Melrose" 1854 tons, 864 pounds; "Theobald" 2971 tons, 876 pounds; "Melrose" 2556 tons, 462 pounds; "Rough and Ready" 158 tons, 144 pounds; "Shasta" 201 tons, 861 pounds, or a total of 14,745 tons, 135 pounds. The overages on the above barges, I will not read. The total overage is 351 tons, 2040 pounds, from which there is a deduction of 34 pounds, a shortage, making a total net overage of 351 tons, 2006 pounds. That overage, of course, may be due, as shown by these figures, to some extent, to coal discharged from other vessels into these barges.

(This document concerning the "Algoa" was here introduced in evidence as U. S. Exhibit 152, and is in words and figures as follows:) [1059—1000]

**[U. S. Exhibit No. 152.—Total Output of Barges  
from January 24 to June 29, 1908.]**

S. S. "INDRA."

1908.

Jan. 24—Feb. 3—

103.2210 Yard Bunkers  
656.1990 Offshore Bunkers  
6248.652 Algoa

---

7009.372

Short 268.1868 Tons

S. S. "THYRA"

1908.

Feb. 11—14—

539.1840 Offshore Bunkers  
2170.1461 Algoa  
883.2100 Melrose  
249.1490 Nanaimo  
888.1020 Theobald  
151.450 Shasta  
60.1390 Pinole  
96. "  
70.120 Thyra

---

5110.911

Short 69.1329 Tons

"ALGOA"

a/c 'Indra'.....	6248.652
" 'Thyra'.....	2170.1461

---

8418.2113

## EX "ALGOA"

1908.

June 3.	Melrose	316.779
Aug. 26.	"	227.1392

1909.

Apr. 8—10.	"	1014.1335
" 21—24.	"	1042.1125
May 18—21.	Theobald	1078.475
" 21—24.	Melrose	705.1170
June 4—8.	Theobald	924.972
" 9—12	Melrose	880.1915
" 19—23.	Theobald	906.297
" 19—30	Melrose	1080.416
" 30	Rough and Ready	157.1486
" 29	Sch. "Shasta"	201.495

---

 8535.657

Over—116.784

[1061—1002]







Total Output of Barges Loaded Wholly or in Part  
from S. S. "Algoa."

		Tons	lbs.
July 22, 1908.	Melrose	2966.	379
Oct. 12, "	"	3005.	1805
Apr. 20, 1909.	"	1031.	1864
June 3, "	"	1854.	864
July, 2, "	Theobald	2971.	876
Aug. 14, "	Melrose	2556.	462
July 6, "	Rough and Ready	158.	144
July, 3, "	Shasta	201.	461

---

Total..... 14745.135

Overages on above Barges.

			Tons	Lbs.
July 22, 1908.	Melrose	Over	133.	1628
Oct. 12, "	"	"	20.	223
Apr. 20, 1909	"	"	17.	529
June 3, "	"	"	106.	809
July 2, "	Theobald	"	62.	1372
Aug. 14, "	Melrose	"	11.	1061
July 6, "	Rough and Ready	"		.898
				351.2040

Deduct:

July 3, 1909	Shasta	Short	.34
Total Net Overage			351.2006

At the time when I was comparing the items contained in U. S. Exhibit 125, Table C, with the items contained in the books kept by defendant, Mills, I likewise compiled a table for showing overages which exceeded nine per cent in the discharge of barges.

(The attention of the witness was here directed to a table consisting of two pages.)

In this table I have indicated a number of items where the percentage of overages upon the clearances of the barge exceeded nine per cent. The first column on the left-hand side labeled "page" refers to the page of U. S. Exhibit 125, Table C. The heading, "Barge," in the next column is the name of the barge. The heading, "Date," in the next column contains under it two dates opposite each barge; the first date which the date on the right indicates the first date on which the barge received any coal from any source after she had been previously emptied, and the second date indicates the date of final discharge or clearance of the barge. The last column, entitled, "Percentage of Overage," gives the percentage based on the actual overages as compared with the total amount of coal received into the barge.

(The document was here introduced in evidence as U. S. Exhibit 153, and is in words and figures as follows:) [1065—1006]

**[U. S. Exhibit No. 153.—Table Showing Percentage of Overages.]**

Page,	Barge.	Date.	Percentage of Average.
2	"Theobald"	Jan. 17-31, 1906	9.4
2	"Nanaimo"	Feb. 3-10, "	32.5
7	"Ludlow"	May 3-22, "	9.5
9	"Theobald"	June 29-July 6, 1906	12.2
9	"Ruth"	July 11-21, 1906	15.6
11	"	Aug. 30-Sept. 14, 1906	10.
16	"	Jan. 29-Feb. 3, 1907	13.
21	"Ludlow"	May 13-29 "	20.
21	"Nanaimo"	June 24-July 6, "	21.
23	"Melrose"	July 31-Aug. 7, "	21.
23	"Theobald"	Aug. 19-27 "	16.
26	"Comanche"	Nov. 7-20 "	14.
24	"Theobald"	Sept. 5-24 "	10.
28	"	Feb. 13-18, 1908	16 $\frac{2}{3}$
28	"Melrose"	" 11-22, "	18.5
28	"	" 24-29, "	10.5
30	"Comanche"	May 16-21 "	23.5
31	"Ludlow"	June 27-July 16, 1908	24.
35	"Theobald"	Oct. 5-19, 1908	14.
37	"Melrose"	Nov. 11-Dec. 30, 1908	9.6
38	"	Jan. 4-15, 1909	11.
39	"Ruth"	Dec. 1/08-Feb. 25, 1909	11.
39	"Theobald"	Feb. 13-Mar. 10, 1909	11.5
45	"Comanche"	Oct. 22-29, 1909	16.6
45	"Theobald"	Nov. 13-Dec. 2, 1909—	11.8
45	"Nanaimo"	Dec. 7-27, 1909	9.
46	"Theobald"	" 31/09-Jan. 31, 1910	9.8

[1066—1007]

Page.	Barge.	Date.	Percentage of Average.
47	"Theobald"	Jan. 5-15, 1910	12.9
47	"Melrose"	" 15-19, "	10.3
47	"Nanaimo"	" 21-23, "	10.
47	"Ruth"	" 21-23, "	26.
47	"	" 25-28, "	11.8
49	"	Feb. 7-Mar. 23, 1910	11.9
49	"Melrose"	Mar. 16-29, 1910	12.9
50	"Nanaimo"	Apr. 4-May 4, 1910	10.
50	"Comanche"	" 19- " 5, 1910	11.5
50	"Theobald"	" 9- " 19, 1910	10.
52	"Melrose"	July 7-22, 1910	20.6
53	"Comanche"	Aug. 2- 9, 1910	12.4
54	"	Sept. 12-15, 1910	31.
55	"Theobald"	Oct. 20-31, "	14.
56	"	Nov. 10-22, "	10.
58	"	Dec. 9-11, "	42.6
59	"Comanche"	Jan. 17-21, 1911	13.4
60	"	Feb. 17-Mar. 11, 1911	14.
60	"Theobald"	Mar. 21-Apr. 8, 1911	10.
62	"Nanaimo"	June 12-30, 1911	13.
65	"Melrose"	Sept. 18-27, 1911	19.4
66	"Comanche"	" 28-Oct. 11, 1911	13.7
67	"Melrose"	Nov. 4-Dec. 4, 1911	17.
67	"	Dec. 6-12, 1911	14.
68	"Nanaimo"	" 8-17, 1911	15.8
73	"Theobald"	May 23-25, 1912	40.
73	"Melrose"	June 4-18, 1912	12.7
75	"Nanaimo"	Sept. 17-Oct. 9, 1912	11.7
73	"Wellington"	May 23-27, 1912	11.)

(Testimony of Michael J. Costello.)

Mr. ROCHE.—I would like to read part of this. I want to call the jury's attention to the names of some of these barges, and some of the dates.

Barge "Theobold," January 17 to January 31, 1906, percentage of overage, 9.4 per cent. Barge "Nanaimo," February 3 to 10, being 8 days, percentage of overage, 32.5 per cent; barge [1068—1009] "Ludlow, May 3 to 22, percentage of overage, 9.5 per cent; barge "Theobold," June 29 to July 6, 1906, 12.2 per cent; barge "Ruth," July 11 to 21, 15.6 per cent; same barge, August 30 to September 14, 10 per cent; same barge, January 29 to February 3, 1907, being six days, 13 per cent; barge "Ludlow," May 13 to 29, 20 per cent; barge "Nanaimo," June 24 to July 6, 21 per cent; barge "Melrose," July 31 to August 7, 21 per cent; barge "Theobold," August 19 to 27, 16 per cent; barge "Comanche," November 7 to 20, 14 per cent; barge "Theobold," September 5 to 24, 10 per cent; barge "Theobold," February 13 to 18, 1908, 16 $\frac{2}{3}$  per cent; barge "Melrose," February 11 to 22, 18.5 per cent; same barge, February 24 to 29, 10.5 per cent; barge "Comanche," May 16 to 21, 6 days, 23.5 per cent; barge "Ludlow," June 27 to July 16, 24 per cent; barge "Theobold," October 5 to 19, 14 per cent; barge "Melrose," November 11 to December 30, 9.6 per cent; same barge, January 4 to 15, 11 per cent; that is 1909; barge "Ruth," December 1, 1908, to February 25, 1909, 11 per cent; barge "Theobold," February 13 to March 10, 11.5 per cent; barge "Comanche," October 22 to 29, 16.6 per cent; barge "Theobold," November 13, to December 2, 11.8 per cent;



(Testimony of Michael J. Costello.)

barge "Nanaimo," December 7 to 27, 9 per cent; barge "Theobold," December 31, 1909, to January 31, 1910, 9.8 per cent; barge "Theobold," January 5 to 15, 1910, 12.9 per cent; barge "Melrose," January 15 to 19, 10.3 per cent; barge "Nanaimo," January 21 to 23, 10 per cent; barge "Ruth," January 21 to 23, 4 days, 26 per cent; same barge, January 25 to 28, 11.8 per cent; same barge, February 7 to March 23, 11.9 per cent; barge "Melrose," March 16 to 29, 12.9 per cent; barge "Nanaimo," April 4 to May 4, 10 per cent; barge "Comanche," April 19 to May 5, 11.5 per cent; barge "Theobold," April 9 to May 19, 10 per cent; barge "Melrose," July 7 to 22, 20.6 per cent; [1069—1010] barge "Comanche," August 2 to 9, 12.4 per cent; September 12 to 15, 31 per cent; barge "Theobold," October 20, to 31, 14 per cent; same barge, November 10 to November 22, 10 per cent; same barge, December 9 to December 11, a period of three days, 42.6 per cent; barge "Comanche," January 17 to 21, 1911, 13.4 per cent; same barge, February 17 to March 11, 14 per cent; barge "Theobold," March 21 to April 8, 10 per cent; barge "Nanaimo," June 12 to 30, 13 per cent; barge "Melrose," September 18 to 27, 19.4 per cent; barge "Comanche," September 28 to October 11, 13.7 per cent; barge "Melrose," November 4 to December 4, 17 per cent; same barge, December 6 to 12, 14 per cent; barge "Nanaimo," December 8 to December 17, 15.8 per cent; barge "Theobold," May 23 to May 25, three days, 1912, 40 per cent; barge "Melrose," June 4 to 18, 12.7 per cent; barge "Nanaimo," September

(Testimony of Michael J. Costello.)

17 to October 9, 11.7 per cent; barge "Wellington," May 23 to May 27, 11 per cent.

Cross-examination by Mr. McCUTCHEN.

Mr. McCUTCHEN.—Do we understand that this exhibit No. 151—I show it to you so that you may know what 151 is—represents the total deliveries of coal to barges, and the total deliveries from barges in excess of the receipts by barges and deliveries from barges as shown on Exhibit "C"?     A. Yes.

Q. That is to say that exhibit is intended to show the total deliveries to barges and the total deliveries from barges?     A. Yes.

Q. And the total deliveries to barges, according to that exhibit, is what?

A. 595,492 tons, 102 pounds. [1070—1011]

Q. And the total deliveries from barges is what?

A. 628,715 tons, 644 pounds.

Q. Now, I understand you to testify that this exhibit which you hold in your hand, taken with Exhibit "C," shows the total deliveries to barges, according to the Mills' books.     A. Yes.

Q. And the total deliveries from barges according to the Mills' books?     A. Yes.

Q. Now, will you tell the jury how much time you have spent on this matter since Exhibit "C" was offered in evidence here?

A. Why, I did not take any note of the time; I guess it took about a week.

Q. About a week?     A. Probably.

Q. And do we understand you to say that the total which you have there, of—give me those figures

(Testimony of Michael J. Costello.)

again?     A. 595,492 tons, 102 pounds.

Q. Is the total shown by the Mills' books as received into the barges?

A. The calculation made from the Mills' books.

Q. You are certain that is correct?     A. Yes.

Q. It seems useless to put the question to you, but I will put it: Do you state that the total deliveries to barges as shown by the Mills' books during the period purported to be covered by Exhibit "C" does not exceed 700,000 tons?     A. Yes.

Q. You do state that?     A. Yes.

Q. You are positive of that?     A. Yes.

Q. Have you the Mills' diaries here?

A. Yes, I believe they are in Court.

Q. Will you turn to the diary for January, 1908, before you do that, let me ask you this question; Do we understand that these two exhibits, taken together, show the deliveries of all [1071—1012] coal to the barges, whether that coal was subsequently delivered to drawback steamers, or to other purchasers?

A. Yes.

Q. Now, then, will you let us see whether in that Exhibit 151 you have included, if you have included, the deliveries to and the deliveries from the barge "Nanaimo," beginning in January, 1908?

Mr. ROCHE.—What was the date of clearance?

Mr. McCUTCHEN.—Q. According to the memorandum which I have, Mr. Costello, you began receiving coal on the 15th day of January and was discharged on the 18th of March?

A. I will have to correct that statement; I have

(Testimony of Michael J. Costello.)

recalled to mind that in going over these books I have found many instances where the barges were omitted from the exhibit and were not included in the exhibit.

Q. Then you cannot tell the jury now, even after all this time you have spent in this matter, the total deliveries in tons to the barges and the total deliveries in tons from the barges?

A. I did not take note of those that were omitted from the exhibit "C."

Q. How, then, can you give the jury the correct percentage of the overages?

A. The percent of overages is based on the deliveries in the exhibit.

Q. You are an accountant, are you not, Mr. Costello?     A. Yes.

Q. And is that the way you would get at the percentage of overages if you were going to get at it correctly?

A. Yes, sir. The figures are correct so far as the figures in the exhibit are concerned.

Q. Supposing you discounted entirely all the coal delivered [1072—1013] to the barges and had simply taken into consideration the overage, what percentage would you have gotten then; that is to say, if you had discarded all of the deliveries we will say in excess of 10,000 tons, and all of the deliveries in excess of 10,000 tons, plus the 33,000, that would not make any difference in the actual overage in tons, would it?     A. No, sir.

Q. Would it have made any difference in the percentage of overage?

(Testimony of Michael J. Costello.)

A. It would have made a difference, yes.

Q. Don't you know as an accountant that in order to get at the correct percentage of overage you must take the total number of tons delivered to the barges and the total number of tons delivered by the barges?

A. In figuring the percentage, my percentage does not take in those items that were missed from Exhibit "C."

Q. Let me have that "Exhibit 151" again, please. Are you quite correct about that now, that this "Exhibit 151" does not deal with any of the omissions from Exhibit "C"?

A. No, sir; that does not deal with any of the omissions from Exhibit "C"; all those items are included in Exhibit "C."

Q. And are these totals all included in the totals of Exhibit "C"?

A. No, those totals are given there—the totals which are given there are the correct totals which are obtained by adding the excess which was omitted to the totals which were shown in the original exhibit.

Q. Then this really has not thrown very much light on the subject, has it?

A. It has raised the amount of coal received into the barges and delivered from the barges to the extent of some—what is the figure? Thirty-one thousand, is it not? [1073—1014]

Q. But still it has not raised it according to your statement so as to show what was in fact delivered to the barges and delivered from the barges.

A. There are still many items that were missed.



(Testimony of Michael J. Costello.)

Q. You say many items?      A. Yes.

Q. And you are not prepared to say that those additional items will not increase the aggregate by at least 100,000 tons, are you?

A. No, I don't believe they would. Of course, I could not give you any definite figure on that.

Q. What does this percentage represent that you have given?

A. It is the percentage of overage based on the receipts as shown on that exhibit.

Q. But that does not state the percentage accurately, does it, if it does not take into consideration the total deliveries to the barges?

A. Neither does it take into consideration the total overage.

Q. And for that reason the percentage is inaccurate, is it not?

A. The percentage is accurate in so far as the items that are included *is* concerned.

Q. What is it intended to show?

A. The percentage of overage in the amount of coal shown to have been received.

Q. Shown to have been received by the Mills' books?      A. By the barges.

Q. I say by the Mills' books?

A. As I said before, there are many items in the Mills' books that are not included there as they were missed in making up the original exhibit.

Q. Then let me ask you again, Mr. Costello, what is it a percentage of?

A. It is a percentage of the amount of coal that we

(Testimony of Michael J. Costello.)

had noted in Exhibit "C," plus the excess which I have noted in that "Exhibit 151." [1074—1015]

Q. Then in order to get at the correct percentage of overage you would still be compelled to take into consideration the other items, would you not?

A. I don't think so.

Q. Do you mean that, Mr. Costello?

A. If I took the other items which were meant I will also have to take the overage on those items.

Q. Of course you would; and is not that the only way you could get at the percentage of overage with anything like accuracy?

A. I have no reason to believe it would change the result any.

Q. Well, let us see. Just assume for a moment that you are 100,000 tons out of the way with reference to deliveries to the barges and that you are 100,000 tons out of the way with reference to deliveries from the barges, would that make any difference in percentage? A. Well, if I had—

Q. (Intg.) Answer the question yes or no, and then make your explanation. I do not want to cut you off from your right to explain. Now, I ask you that question as an accountant.

Mr. ROCHE.—That will be conceded.

Mr. McCUTCHEN.—Counsel says that he will concede that although the witness seems to have some trouble about conceding it.

Mr. ROCHE.—There is not any question about it.

Mr. McCUTCHEN.—Of course there is no question about it.

(Testimony of Michael J. Costello.)

A. Yes, sir; it would if no other overage were taken into consideration. Of course, it would, but when you take into consideration the fact that that 100,000 tons would in itself show an overage—

Q. (Intg.) Oh, they would show an overage you think if the excess is 100,000 tons?

A. Undoubtedly they would [1075—1016] show a proportionate overage.

Q. Well, what does Exhibit “C” show aided by “Exhibit 151”; what do they show together?

A. I have not got the figures here.

Q. I am not asking you to state the exhibit; I don’t want the detail of the figures; I just want to know what they accomplish taken together.

A. They are incomplete record of the total receipts and deliveries from the barges from the 1st of January, 1906, to December 31, 1912; I say they are incomplete because a number of items were omitted in making up the original exhibit.

The COURT.—Q. What is the 31,000 tons you added to Exhibit “C”? Where did you get those? What do those represent?

A. Those were amounts that were not carried over by Mr. Mills to the final discharge of the barge and so were lost track of because in making up the exhibit we took the figure, of course, shown by Mr. Mills, that is, the figures shown on the date the barge was cleaned up. But in those twenty instances several hundred tons had been received and delivered and only the balance carried forward; that is, where a barge was partially emptied and loaded again, instead of mak-

(Testimony of Michael J. Costello.)

ing a clearance or instead of carrying along as he usually did the entire amount of receipts and deliveries right to the end he dropped the receipts and deliveries up to that date and only carried forward the balance that was shown on that date.

Q. Are those the only instances that are found in the books?

A. Those are the only instances, yes, your Honor.

Mr. McCUTCHEN.—Q. Now, turn to January, 1909, and see whether there is not another instance of the same kind—1908. That is the one you turned to a moment ago when you said there were other omissions. [1076—1017]

Mr. ROCHE.—I want to say, if the Court please, in fairness to ourselves, that when we put the witness on the stand we assumed that all inaccuracies of all kinds had been cured, including any possible omissions that had occurred so far as Exhibit “C” was concerned.

Cross-examination by Mr. OLNEY.

Mr. OLNEY.—Q. As I understand you, Mr. Costello, your testimony is that taking into consideration this “Exhibit 151,” I think it is, and Exhibit “C,” that so far as the items are concerned which appear in Exhibit “C” and which were not omitted from Exhibit “C,” that would show the correct amount of overage? A. Yes, sir.

Q. Of some 33,000 tons? A. Yes, 33,223 tons.

Q. And you have gone through these books and have looked for errors in them, and have corrected those that you found? A. Yes, sir.

(Testimony of Michael J. Costello.)

Q. And you still have that figure of 33,000 tons?

A. Yes, sir.

Q. Have you a statement there of the errors which you discovered in the books?

A. No, I have not; well, what do you mean? I did not take note of the clerical errors that we were not concerned with. I have a statement of the barge loads in which the entire receipts and deliveries were not taken into account.

Q. Did you check Mr. Mills' books so that you know that so far as Exhibit "C" goes and so far as "Exhibit 151" goes, that they are a correct statement of overages?

A. Yes, sir; with the exception of those six items, and, of course, whatever items may have been omitted from the Exhibit "C"; I did not check those.  
[1077—1018]

Q. Let me see these six items.

A. Those are items I could not check on account of clerical errors and inaccuracies.

Q. Now, I will ask you to turn to the "Comanche" under date of March 24, 1911, and ask you if you don't find there a balance in the "Comanche" of 543 tons, 1570 lbs.? A. Yes, sir.

Q. Now, on the next day you find that she has taken on a total of 396 tons, 770 lbs. from the "St. Ronald," do you not? A. Yes, sir.

Q. Of the 396 tons, 770 lbs., which she has taken on from the "St. Ronald," there are 210 tons, 2090 lbs., included in the previous balance, are there not?

A. Yes, I presume that is the difference between the figures.



(Testimony of Michael J. Costello.)

Q. That would leave in addition to the previous balance of 543 tons, 1,570 lbs., the difference between 396 tons, 770 lbs., and 210 tons, 2,090 lbs., or 185 tons, 920 lbs., would it not? A. Yes, sir.

Q. In other words, the barge at that time should have been charged with 543 tons, 1,570 lbs., and 185 tons, 920 lbs.? A. I don't follow you.

Q. You get the balance of 543 tons, 1,570 lbs., do you not? A. Yes.

Q. In that is included 210 tons, 2,090 lbs., from the "St. Ronald," is there not? A. Yes, sir.

Q. But when on the next day the "St. Ronald" was through discharging she had put into the "Comanche" 396 tons, 770 lbs.? A. Yes, sir.

Q. Therefore the "Comanche" had on hand in addition to the balance of 543 tons, the difference between 396 tons and 210 tons.

A. On that day, but I presume you will find [1078—1019] the full amount later on.

Q. Just a moment; we will come to that later. Is not that correct so far?

A. That is correct so far.

Q. On the 25th the "Comanche" also took on from the offshore bunkers 46 tons, 130 lbs.?

A. Yes, sir.

Q. And also 88 tons, 760 lbs.? A. Yes, sir.

Q. Making a total there of 134 tons, 890 lbs.?

A. Yes, sir.

Q. Now, look under the date of March 30th. You can run right down through the days yourself, Mr. Costello, but I think that you will find that that is

(Testimony of Michael J. Costello.)

the next entry, under date of March 30th.

A. Yes.

Q. And on that day she took on 101 tons, 2190 lbs.?

A. Yes, sir.

Q. And she also took on from the "Henry" 47 tons, 1640 lbs., did she not?      A. Yes, sir.

The COURT.—I don't think, Mr. Olney, we will have time to trace this to-night.

Redirect Examination by Mr. ROCHE.

None of the discrepancies or omissions to which I have testified upon cross-examination would in any way affect the individual percentages in the cases of the overages I have given as exceeding nine per cent.

**[Testimony of R. Gundersen, for the Government.]**

R. GUNDERSEN, a witness called for the United States and sworn, testified as follows:

Direct Examination by Mr. ROCHE.

I reside in Alameda and for the five years last past have [1079—1020] been working for the Alaska Packers' Association. For three years prior to February 22, 1909, I was first mate on the steamship "Torngenskjold." We took cargoes of coal in that vessel from Nanaimo to San Francisco. When the vessel was loaded at Nanaimo, I know the coal we took aboard was weighed. The cars were weighed as they came along. The scales-house at Nanaimo was about two minutes' walk from the dock. I never saw any carload of coal pass the scales-house and be discharged in my vessel that was

(Testimony of R. Gundersen.)

not weighed. That was the practice that was pursued during the whole three years I was mate on this vessel plying between Nanaimo and San Francisco.

Cross-examination by Mr. McCUTCHEN.

The “Torngenskjold” loaded partly at Northfield on many of her trips. The scales-house at Northfield was just about where the ship was lying. I could not swear that all the coal that went into the ship from Northfield went over the scales because I did not keep track of that. The ship was time-chartered and it was of no interest to me whether we took aboard 100 tons or 1000 tons. I know that some of the Northfield coal was weighed, but I would not say that all of it was weighed, but my memory is not accurate on that subject. The coal loaded onto the “Torngenskjold” at Northfield was discharged by a conveyor belt into the bunkers, and, also, by a conveyer belt from the bunkers into the ship. I don’t know whether it was weighed or not. On some of the trips of the “Torngenskjold” her cargo was taken to San Diego.

Redirect Examination by Mr. ROCHE.

I have no recollection as to how many times my vessel went [1080—1021] to Northfield for the purpose of taking on either a whole or a split cargo of coal. We did not go as often to Northfield as we did to Nanaimo for our cargoes. I think there was a scale at Northfield, but I do not know whether they weighed on it or not.

[**Testimony of Andrew Arntzen, for the  
Government.**]

ANDREW ARNTZEN, a witness called for the United States and sworn, testified as follows:

Direct Examination by Mr. ROCHE.

I now reside, and have resided for six years, in San Francisco. I have been for twenty months last past second officer on the ferry boat "Sausalito." From the spring of 1904 until the spring of 1906 I was employed first as third mate and afterwards as second mate on the Steamer "Titania," plying between San Francisco and Nanaimo and Ladysmith, and, occasionally, down to San Diego. I remember our taking on coal at Nanaimo. It was only during the last few months that we took any coal at Northfield, the Northfield Mine not having been opened until that time. Even after that it was only on some of the trips that we went to Northfield for coal. I was in the scales-house at Nanaimo only once. I was supposed to weigh the coal but, of course, the man belonged to the company weighed it and I took the figures. I just looked at the scales. On that occasion all of the cars that were subsequently discharged into my ship passed over the scales. I took the weights as recorded by the scales and gave them to the first officer or the captain in the evening. We took into account the tare of the cars. Whether on other occasions than the one occasion I have mentioned the cars passed over the scales at Nanaimo, I cannot say. It was not my business to make observations in that connection. [1081—1022]

(Testimony of Andrew Arntzen.)

Cross-examination by Mr. McCUTCHEN.

It must have been in the summer or fall of 1905 that the Northfield Mine was opened. It is my best recollection that from that time on we took a part of each cargo from Northfield. It is also my present recollection that we went to San Diego at least three times a year during my service on the "Titania."

**[Testimony of Daniel Lauritzen, for the  
Government.]**

DANIEL LAURITZEN, a witness called for the United States and sworn, testified as follows:

Direct Examination by Mr. ROCHE.

I live in Oakland. I am a deckhand. For three years prior to February 25, 1909, I was second mate on the "Torngenskjold" plying between San Francisco and Nanaimo, and, occasionally making a trip to San Diego. The vessel during those three years frequently took on a cargo of coal at Nanaimo, and, quite often, a cargo or part of a cargo at Northfield. I sometimes saw coal being dumped in my boat at Nanaimo and also the operations preliminary thereto. I was at the scales-house twice in the middle of the day. I never took weights myself. Sometimes I saw the cars loaded with coal coming toward the scales-house and subsequently from the scales-house over to the boat. So far as I know, the cars stopped at the scales, but I do not know whether they were in fact weighed. I cannot tell you whether I ever saw any coal being brought to the vessel at Nanaimo which did not come over the scales.



(Testimony of Danel Lauritzen.)

Cross-examination by Mr. McCUTCHEN.

I was down on the ship superintending the disposition of cargo when coal was being laden into the ship. I could not see [1082—1023] the scales-house then. It was only very occasionally that I took a trip ashore.

**[Testimony of D. C. Norcross, for the Government  
(Recalled).]**

D. C. NORCROSS, a witness recalled for the United States and examined by Mr. Roche, testified as follows:

I have known of R. P. Schwerin as Vice-president and General Manager of the Pacific Mail Steamship Company for a number of years. The Western Fuel Company has an account with him for coal delivered to him. The book which you show me is the transfer ledger of the Western Fuel Company containing the older accounts taken from the current ledger. (The attention of the witness was here directed to an account on page four of said transfer ledger entitled, "R. P. Schwerin, San Mateo.") I don't remember ever looking at that account, but it is Mr. Schwerin's account with the Western Fuel Company. The account shows that a certain amount of coal was delivered to R. P. Schwerin and paid for by him. The total amount from September 11, 1907, to March 12, 1910, is \$496 with credits of an equal amount to March 17, 1909. The coal was, according to the ledger, delivered to Mr. Schwerin's home at San Mateo and the account is a personal one. I don't think any money was received from Mr. Schwerin

(Testimony of D. C. Norcross.)

for that coal. I don't believe he paid a five-cent piece to the Western Fuel Company for any part of that coal. The regular order would come to the office and go as a rule to the defendant, James B. Smith, first. He would give notice to the shipping clerk to have the coal shipped and send a regular order to the wharf. All bills for coal deliveries are placed on Mr. Smith's desk, and, when these Schwerin bills reached him, he would hold them up, and at a later date sometime, go to the [1083—1024] bookkeeper and tell him to receipt the bill and make an offset entry for it, charging the amount to operating expenses, so that, as a matter of fact, although our ledger shows Mr. Schwerin did pay for each quantity of coal delivered to him, it would appear that in fact there was not a cent ever paid by him to the company for that coal. The reason for the keeping of the ledger in that way was that we had a regular account with Mr. Schwerin right along and we never changed it. We have a donation account in our ledger. The reason we did not charge these sums to donation is that we did not know this was to be a donation. We would, however, after each one of these bills was receipted by the defendant, James B. Smith, and ordered charged to operating expenses, know in fact that this was to be a donation. I don't know why we did not put these amounts in the donation account. We started in the other way and continued it.

(Another book was here shown to the witness.)

The book now shown me is the current ledger of the

(Testimony of D. C. Norcross.)

Western Fuel Company running up to 1913. R. P. Schwerin has an account in that ledger, being a continuation of the account in the transfer ledger. The first date on this account is November 16, 1910, and joins onto the last account in the transfer ledger, and runs down to June, 1913. This account shows an amount of \$862 of coal furnished to Mr. Schwerin. Of that amount \$772 are shown by the ledger to have been paid. I don't think that Mr. Schwerin in fact paid a five-cent piece on account of that coal. I think the same procedure was pursued so far as each one of these deliveries of coal is concerned as was pursued regarding the other coal in the other account. The reason the account does not balance is that there [1084—1025] are three items that apparently remain uncredited or unpaid. I don't think the Western Fuel Company furnished to Mr. Schwerin for his personal use any coal, except that specified in these two ledger accounts, during the time covered by said accounts. I cannot tell you why the last three items are not credited off. I do not think a bill was ever sent to Mr. Schwerin for any of this coal. Whatever orders were given in connection with that account were given by Mr. Smith. A bill for this coal sent to Mr. Schwerin's San Mateo home was left on Mr. Smith's desk and no charge would be made against Mr. Schwerin and no bill presented to him and no amounts collected from him because of directions given by the defendant, James B. Smith. The bill itself would be receipted by our cashier, acting under instructions

(Testimony of D. C. Norcross.)

from Mr. Smith, and then the amount of the bill would be charged up to operating expenses. There is a specific account in our books called "Operating Expenses." The expense of the coal supplied to Mr. Schwerin would be one of the items in that account, but only the bookkeeper could tell what it represented; that is to say, the statement on operating expenses presented to the directors would simply show a total of \$3,000 or \$4,000 without any specific mention of these smaller items. The bookkeeper and James B. Smith, and Mr. Schwerin himself, would be the only persons who would know anything about the fact that R. P. Schwerin did not pay for the coal. A person unfamiliar with the facts, looking at the account of the Western Fuel Company under the title "Operating Expenses," would not be able to ascertain that part of said expenses consisted of furnishing this coal to R. P. Schwerin. The bookkeeper did not keep in his possession a memorandum showing that one of the items in operating expenses [1085—1026] was coal supplied to Mr. Schwerin. All he had down would be the amount when he summarized the totals for the month in disbursements. The name of R. P. Schwerin did not appear among these items; simply the amount would appear. No official of the Western Fuel Company has in his possession to my knowledge a memorandum showing that R. P. Schwerin is the name of the person to whom this coal was delivered.

(Testimony of D. C. Norcross.)

(The items in the transfer ledger and current ledger, respectively, to which the witness has just testified were here offered in evidence without being marked as exhibits and read into the record as follows:)

"Sheet No. 4.

Western Fuel Co.

Name—R. P. Schwerin, San Mateo.

Address—1814 Broadway.

Address 1811 Broadway.								
Date.				Date.				
1917.	Folio.	Ck.	Charges.	Charges.	1907.	Folio.	Ck.	Credits.
Sept.	11	24.	24.		Sept.	13	52	24.
Oct.	24	20.			Oct.	28	66	20.
	28	20.	40.			31	68	20.
Nov.	11	32.	32.		Nov.	18	76	32.
					1908.			
Dec.	12	20.	20.		January	7	100	20.
1908.								
January	9	32.	32.		January	14	103	32.
February	1	20.	20.		February	6	116	20.
March	5	16.			March	9	133	16.
	20	10.	26.			26	140	10.
April	16	26.	26.		April	20	151	26.
May	19	20.	20.		May	21	165	20.
July	18	20.	20.		July	23	189	20.
Sept.	10	20.00	20.		Sept.	16	211	20.
Oct.	29	56.00	56.00		Nov.	4	234	56.00
Nov.	27	20.00	20.00		Dec.	1	249	20.00
Dec.	23	18.00	18.00		Dec.	31	263	18.00
1910.					1909.			
Jan.	2	36.00			Jan.	6	267	36.00
	4	20.00				8	268	20.00
	29	10.00	66.00		Feb.	2	282	10.00
Mch.	12	56.00	56.00		Mch.	17	10	56.00

496 "

[1086—1027]



"4 Western Fuel Co.

Sheet No. 4

Name—R. P. Schwerin, San Mateo.

Address—1814 Broadway.

Date.

190 .	Folio.	Ck.	Charges.	Charges.	Date.	Folio.	Ck.	Credits.
				496.00				
Apl.	7		20.00	20.00	Apl.	12	23	20.00
May	3		10.00	10.	May	6	34	10.00
June	1		1.00	1.	June	18	51	1.
July	2		20.00	20.	July	8	59	20.
Aug.	28		20.00	20.00	Sept.	4	80	20.00
Oct.	15		20.00	20.00	Oct.	20	98	20.00
Nov.	30		20.00	20.00	Dec.	6	119	20.00
Dec.	22		5.00	5.00				

1910.

Jan.	10		10.00					
	27		10.00	20.00	Feb.	2	153	25.00
Feb.	17		10.00					
	21		20.	30.00	Mch.	8	170	30.00
Apr.	7		10.00	10.00	May	3	195	10.00
May	17		10.00	10.00		23	202	10.00
June	14		10.00	10.00				
July	23		10.00	10.00	July	29	229	20.00
Aug.	20		10.00	10.00	Aug.	31	241	10.00
Sept.	23		20.00	20.00	Sept.	27	251	20.00

"Sheet No. 4.

Western Fuel Co.

Name—R. P. Schwerin.

Address—1814 Broadway, S. F.

1910.	Folio.	Ck.	Charges.	Charges.	Date.	Folio.	Ck.	Credits.
					1910.			
Nov.	16		30.00	30.00	Nov.	25	297	30.00
	26		20.00	20.00	Dec.	13	287	20.00
Dec.	13		50.00	50.00	Dec.	17	289	
					1911.			
Jan.	12		20.00		Jan.	16	7	20.00
	20		30.00	50.00		25	11	30.00
Feb.	9		20.00	20.00	Feb.	26	22	20.00
	28		30.00	30.00	Mch.	4	28	30.00
Mch.	7		30.00		Mch.	14	34	30.00
	8		20.00		Mch.	13	33	20.00
	29		20.00	70.00	Apr.	4	44	20.00
Apr.	12		20.00	20.00	Apr.	21	52	20.00
May	12		2.00		May	18	63	2.00 .
	23		20.00	22.00		27	66	20.00
June	15		20.00	20.00	June	22	77	20.00
July	21		30.00	30.00	July	28	90	30.
Aug.	31		40.00	40.00	Sept.	20	110	40.00
Nov.	18		30.00	30.00	Nov.	28	140	30.00

(Testimony of D. C. Norcross.)

Western Fuel Co.

Sheet No. 4

Name—R. P. Schwerin.

Address—1814 Broadway, St. S. F.

Date. 1910.	Folio.	Ck.	Charges	Charges.	Date. 1912.	Folio.	Ck.	Credits.
	28		20.00	20.00	Dec.	1	143	20.00
					1912.			
Dec.	28		60.00	60.	Jan.	26	171	60.00
1912.								
Jan.	5		20.00	20.00	Feb.	3	175	20.00
Mch.	4		20.00	20.00	Apr.	19	213	20.00

[1087—1028]

				552.00				
Apr. 17	1	20.00	20.00		May 21	230	1	20.00
May 25	2		30.00		June 4	236	2	30.00
July 18	3		30.00					
Sept. 18	3		30.00		Oct. 16	293	3	60.00
Oct. 26	5		60.00					
					1913.			
Nov. 8	4		30.00		Jan. 16	38	4	30.00
1913.								
Jan. 6	5		20.00		Feb. 8	51	5	80.00
								220.
23			20.					
Mch. 21			30.00					
June 18			40.00					
90.00			862.00					

(Counsel for the defendants here admitted, on Mr. Roche's assurance, that such was the fact, that a Mr. Thompson is now, and has been for five years last past, Purchasing Agent for the Pacific Mail Steamship Company.)

I think the Western Fuel Company has supplied Mr. Thompson, the Purchasing Agent of the Pacific Mail Steamship Company, with coal for the last five years gratis. I find two items of deliveries from Oakland, and I understand that some coal was de-

(Testimony of D. C. Norcross.)

livered to him from this side of which no record was made and for which no charge was made. I do not know, and there would be no way of telling, what quantity of coal was supplied each year by the Western Fuel Company to Thompson. As I understand it, [1088—1029] if he wanted coal he would get it by asking the defendant, Mills. I find no records of such deliveries except those I have just above mentioned. Other than those two items, he evidently did not keep any record thereof. I don't know why the coal supplied to Mr. Thompson is not shown in the donation account. Mr. Mills simply did not report it when delivery was made. To that extent the donation account is not correct.

I also know that Marine Superintendent Chisholm of the Pacific Mail Steamship Company has for the past five years been getting coal from the Western Fuel Company supplied to him by the defendant Mills. I do not know why these deliveries are not listed in the donation account or in the ledger account or in some other account of the Western Fuel Company.

I don't believe I know any of the assistant custom weighers who from time to time have been engaged in weighing coal. I understand there are about 25 of them. I believe that prior to the month of April, 1906, the Western Fuel Company, through its broker, gave to the collector of customs one dollar an hour overtime to be by him paid to the weighers for overtime service. The weighers frequently worked overtime prior to that date. I do not recall

(Testimony of D. C. Norcross.)

whether or not in April, 1906, or about the middle of the year 1906, the practice of such overtime payment was discontinued, or that the Western Fuel Company received instructions from the collector of customs that said practice would have to be discontinued. I had nothing to do with that. The notice, if such there was, would probably come from the broker into Mr. Smith's office. It frequently occurred I know, after 1906, that boats would be discharged after night, and, also, that barges would have to coal drawback vessels at night. I know that prior to April, 1911, amounts were paid for overtime to [1089—1030] customs weighers, which amounts were taken up on our pay-rolls. When that practice began, I do not know. I understand that that money would be paid to the weighers by the defendant, Mayer, and that he obtained the money from Bud Hopkins, the timekeeper, who in turn would get the money from the cashier in the company's office. I do not know who directed that this money be paid, but I presume that the defendant Mr. James B. Smith, would know about it, or may be the customs broker made the arrangements with the office. No receipt would be taken for this money other than what would be shown on the time-books, and I don't know what is on them. I never saw a receipt signed by any of these weighers for this money, and I do not know of the existence of such a receipt. I don't know whether or not the collector of customs was notified at any time that these men were receiving this money. Whether an assistant weigher

(Testimony of D. C. Norcross.)

would, after the middle of 1906, be allowed a day off by the Government when he worked overtime, I don't know; I know nothing about that. I never remember seeing the name of any weigher or assistant weigher to whom any of these moneys were paid on any of our books. These moneys were finally charged up to operating expenses. By going through the time-books and pay-rolls it could be ascertained how much money was paid by the Western Fuel Company between April, 1906, and the year 1911 to the assistant custom weighers for overtime. It would take about a day to do that. My remembrance is that prior to 1906 the overtime moneys were paid to our broker and by him paid to the collector of customs so that the latter could remunerate the weighers. I think it is a fact that the collector of customs gave the Western Fuel Company a receipt for that money. I don't recall ever having seen a receipt signed by any Governmental official between the [1090—1031] middle of 1906 and the commencement of 1911, when the regulations were changed, representing a five-cent piece paid to any assistant weigher by the Western Fuel Company, nor have I ever seen any book, memorandum, document, time sheet or any other record kept by the Western Fuel Company during that period of time showing the names of any assistant weighers to whom a five-cent piece was paid by the Western Fuel Company for overtime. I don't recall ever having seen a check issued in the name of any assistant weigher representing overtime.



(Testimony of D. C. Norcross.)

(The witness here promised to examine the time-books so as to compile that statement showing the total amounts paid out in overtime to weighers.)

The defendant, Mills, sent a daily report showing overages, whenever one occurred on one of the barges at a cleanup, to the defendant, James B. Smith.

There are not to my knowledge any other accounts in the transfer ledger or current ledges showing payment for coal delivered, which payments were not in fact made.

The stock-book which has been brought here by me, to my knowledge, shows the owners of all the capital stock of the Western Fuel Company. I have a pretty fair knowledge as to who are the actual owners of the stock held in trust by certain stockholders. Very little stock is held in trust by the defendant, James B. Smith; 25 shares, I think. I have compiled and have with me a statement of the stock owned by the defendants in the Western Fuel Company from January 1, 1904, to December 31, 1912.

Q. Just read that into the record.

A. (Reading:)

[1091—1032]

“Stock Held January 1, 1904, April 1, 1906, December 31, 1912.

Name.	Jan. 1, 1904.	Apr. 1, 1906.	Dec. 31, 1912.
John L. Howard	163 shares	9 shares	9 shares
James B. Smith	452 shares	1574 shares	1524 shares
James B. Smith, Trustee	1185 shares	75 shares	25 shares
Joseph L. Schmidt	300 shares	460 shares	476 shares
Joseph L. Schmidt, Trustee		88 shares	434¼ shares
Robert Bruce	20 shares	21 shares	91 shares
Sidney V. Smith	500 shares	1049 shares	1169¾ shares

(Testimony of D. C. Norcross.)

The Howard Company has now, and has had practically since the beginning of the Western Fuel Company, 2475 shares of the stock. 152 shares stand in the name of Helen L. Howard and represent, I think, one of the original subscriptions.

Cross-examination by Mr. McCUTCHEN.

There were, I think, about 25 to 30 stockholders in the Western Fuel Company when it actively began the business of mining and selling coal. The number continued to be about the same from that time on, but some of it was split up and sold off. I do not think the defendant, John L. Howard, owns any stock in the Howard Company.

I do not mean to be understood as saying that Mr. Schwerin never paid for any coal he ever received from the Western Fuel Company. When deliveries were first made to him and his account was opened and coal was sent to him, I believe he paid those bills. Later on, bills were not sent to him. All bills, and not merely those for Mr. Schwerin, were placed upon Mr. Smith's desk.

Q. When you were on the stand some days ago, Mr. Norcross, you testified about some statements having been presented to the board [1092—1033] of directors, or having been read at the meetings of the board of directors at times; will you state just what statements you refer to?

A. The earnings and expense statements, and the general balance sheets, and annual statements.

Q. With the exception of the annual statements, you do not include in that any of these statements

(Testimony of D. C. Norcross.)

that have been offered in evidence, do you?

A. No, I do not.

\* \* \* \* \*

Mr. McCUTCHEM.—Q. So far as you know, with the exception of these annual statements, was any statement presented to the directors, or considered by the directors, in which any reference, whatever, was made to an overage?

\* \* \* \* \*

A. Yes, there was a statement of that kind, or a mention made of overage in one or two of the annual statements.

Mr. McCUTCHEM.—Q. I say, with the exception of those annual statements which have been offered in evidence?

A. Oh, no, sir.

After 1911, the customs weighers were paid overtime through a broker at the rate, I believe, of one dollar an hour.

Redirect Examination by Mr. ROCHE.

I don't think that the defendant, James B. Smith, instructed the cashier to receipt many bills other than those for Mr. Schwerin for which money was not actually paid. I do not think that Mr. Schwerin has paid the Western Fuel Company for any coal since the earthquake and fire of 1906. [1093—1034]

**[Testimony of William S. Miller for the  
Government.]**

WILLIAM S. MILLER, a witness called for the United States and sworn, testified, as follows:

Direct Examination by Mr. ROCHE.

I am now and have been for a number of years employed by the Western Fuel Company. I am a weigher for that company and have been employed in this capacity for 12 years; three or four years of that time in the principal yard of the company at 340 Stewart Street. I use a platform scale there. I know of coal that has been taken out of the yard which has not passed over my scale. That occurs when the coal is hoisted up and taken over the chute. It also occurs when coal is taken out of the yard in carts to be sent to a barge or vessel. Such coal is never weighed. I keep track of it by having one of the yard foremen count the number of loads. I estimate the weight of the coal in the cart and multiply that by the number of carts that go out.

(The direct examination of the witness Miller was concluded at this point. There was no cross-examination.)

Mr. McCutchen at this point admitted that the book here produced by Mr. Roche was the dock-book or diary kept by the defendant, Mills, for the year 1913, and that the handwriting appearing therein, under date of January 10, 1913, was that of the defendant, Mills. Thereupon, the proceedings continued as follows:

Mr. ROCHE.—I desire to offer in evidence simply

(Testimony of William S. Miller.)

the totals appearing under the date of Friday, January 10, 1913, which are admitted to be in the handwriting of the defendant, Mills, and which show the final discharge of the barge "Wellington," which barge was being discharged at the time that Smith and Enlow, or, rather, upon the occasion testified to by the witnesses, Smith and Enlow. It shows that there was discharged into the "Korea" [1094—1035] 974 tons, 448 pounds, and into the "Matilda" 210 tons, 145 pounds, making a total of 1184 tons, 593 pounds; and an overage of 72 tons, 1023 pounds.

Mr. McCUTCHEN.—We will admit that defendant Bruce was first elected a director March 23, 1905, and continued to be a director until April 29, 1909. After that he again became a director on April 6, 1911, and is still a director. Sidney V. Smith was originally elected director December 15, 1902, resigned March 20, 1909, and went back upon the Board June 27, 1912, and has since been a director.

Mr. ROCHE.—Your Honor will recall that a few days ago it was stipulated that certain portions of the minutes should be deemed to have been read in evidence. I think that before we close our case, I ought to direct counsel's attention to the particular dates upon which the meetings were held, part of which minutes we desire to have considered read, so as to perfect the record here.

Mr. McCUTCHEN.—If you would limit the purpose for which you want those minutes in, Mr. Roche, so that we would not be taken by surprise by finding something in them to which our attention has not



(Testimony of William S. Miller.)

been called, we might consent that the entire books go in.

Mr. ROCHE.—We don't desire the entire minute-books to go in, because it would simply encumber the record. It will only take a moment for me to read an extract taken from one of the meetings, and we can assume that only that portion of the proceedings of the other minutes is offered in evidence.

“San Francisco, September 10, 1908.

“Present: John L. Howard, James B. Smith, Joseph L. Schmidt, Robert Bruce and Sidney V. Smith. Statements with balance-sheet showing the results of the company's business to July 31, 1908, were submitted, and on motion of Bruce, seconded by Mr. Sidney V. Smith were accepted and ordered placed on file.”

That is the only extract from those minutes, may it please [1095—1036] the Court, of that date, that we desire to offer in evidence.

I will now direct the reporter's attention to the dates upon which these subsequent meetings were held, and only those portions of the minutes showing the directors present, and those portions of the minutes relating to the submission of statements and the action which was taken by the board of directors on those statements are offered in evidence.

Mr. McCUTCHEN.—Just a moment. Mr. Roche, the situation is not complete simply upon the offer of that portion of the minutes. You have not offered any of these balance sheets. They are here; they are here at your disposal, but you have not offered

(Testimony of William S. Miller.)

them up to this time. It does not seem to us, if your Honor please, that it is proper or that it is fair to these defendants, to offer these resolutions without offering the statements to which the resolutions refer. Of themselves, the resolutions do not explain anything. If counsel is to claim hereafter, as I have no doubt he will claim, that these resolutions refer to something else, he ought to develop to what they refer. If he is going to offer the resolutions for the purpose of showing that some statement was read to the directors, or was considered by them, he ought to offer the statements that were read at the same time.

Mr. ROCHE.—The answer to that is this: We do not consider ourselves bound by the testimony given by the witness, Norcross, as to what did, in fact, come up for consideration before the directors. Now, we have offered in evidence monthly statements showing the total quantity of business in tonnage, some of these statements showing tonnage, and other statements showing dollars and cents, which were rendered from time to time in connection with the business of the company. Now we say, may it please the Court, that it is for the jury to determine, from the language used in these minutes, and from the language in which the proceedings [1096—1037] of the board of directors is couched— I say it is for the jury to determine to what statements the language refers, and whether any of the statements which have heretofore been introduced in evidence are statements referred to by the minutes of the

(Testimony of William S. Miller.)

meetings of the board of directors.

Mr. McCUTCHEN.—We have the testimony of Mr. Norcross— I don't claim that the prosecution is bound by Mr. Norcross' testimony, but we have the testimony of Mr. Norcross, which up to this stage has not been contradicted, that the statements which have been offered in evidence are not the statements referred to in these minutes. The showing up to this time is that those statements are not before the court. As I say, none of us have any objection to the offer of these minutes, but if the resolution to which counsel has just called attention is to be offered and to be considered by the jury, then counsel ought to do one of two things, he ought either to offer the financial statements, of which he has control, and which are in his possession, or he ought to offer proof that the statements which he has already put in evidence are the statements referred to in these resolutions.

Mr. ROCHE.—It seems to me, may it please the Court, that this is a conclusive answer to the contention of Mr. McCutchen; that we—

The COURT.—How is this matter before the Court? Is there an objection to this resolution?

Mr. ROCHE.—It really is not before the Court at this time.

Mr. McCUTCHEN.—Counsel was offering that, and I was only suggesting that to get the whole matter before the Court, these statements should be offered, and that the record will be incomplete, if the offer of the resolution, itself, is unaccompanied by those statements. [1097—1038]

(Testimony of William S. Miller.)

Mr. ROCHE.—Is there any objection to these minutes going in?

Mr. McCUTCHEN.—I don't think they are material, and I don't think they are complete.

Mr. ROCHE.—We submit that objection.

Mr. DUNNE.—We put the objection on the ground that the offer is without foundation.

The COURT.—The objection is overruled.

Mr. DUNNE.—We take an exception.

Mr. ROCHE.—You will consent, Mr. McCutchen, that I may simply direct the reporter's attention to the particular dates upon which these meetings were held?

Mr. McCUTCHEN.—Oh, yes.

Mr. ROCHE.—Only those portions of the proceedings already indicated by me being offered in evidence.

Mr. McCUTCHEN.—Yes.

Mr. ROCHE.—That is, that part of the minutes showing the directors present, and that portion of the minutes showing the statements presented and the action taken by the board.

September 10, 1908, September 30, 1908, November 4, 1908, December 7, 1908.

February 18, 1909. We desire to offer in evidence, so far as February 18, 1909, is concerned, that portion of the minutes showing the submission of the annual statement which has already been introduced in evidence.

Mr. McCUTCHEN.—Just the portion you have offered.

(Testimony of William S. Miller.)

Mr. ROCHE.—Yes. February 23, 1909, March 10, 1909, March 20, 1909, April 29, 1909, June 7, 1909, July 14, 1909, August 3, 1909, September 27, 1909, December 9, 1909, December 30, 1909.

February 1, 1910, May 18, 1910, June 28, 1910, August 25, [1098—1039] 1910, September 22, 1910, October 27, 1910, November 25, 1910, December 21, 1910.

January 26, 1911, March 24, 1911, July 1, 1911, July 22, 1911, August 29, 1911, September 28, 1911, November 29, 1911, December 26, 1911.

(Counsel for the prosecution here stated that they would have no objection to his Honor permitting Mr. Norcross to be recalled to the stand for further cross-examination by counsel for the defendants, the latter having stated that they wished to recall him in order to ask him what the statements are which are referred to in the minutes just introduced in evidence by counsel for the prosecution. Mr. Olney of counsel for the defendants then stated that he wished to correct a suggestion with reference to a matter to which attention had been called in the Mills Diary for 1912 and the early part of 1913, and the proceedings continued as follows:)

Mr. OLNEY.—If your Honor please, it is with reference to the discharge of the "Theobold," in which case Mr. Roche stated that Mr. Enlow had testified that the barges were going up level.

Mr. ROCHE.—You mean that the tubs were going up level?

Mr. OLNEY.—Yes, that the tubs were going up



(Testimony of William S. Miller.)

level, and that she had overrun only 1403 lbs. That entry appears under the date of Saturday and Sunday, the 21st and the 22d of December, 1912; but the next entry of the "Theobold" which appears in the book is on the 24th, and that entry is, from "Theobold" surplus into the "San Jose" 29 tons, 585 lbs. And then following that there occur during the 3 or 4 days some deliveries into the "Theobold" and out of the "Theobold" but it results finally on the 31st in a total of deliveries into [1099—1040] the "Theobold" of 919 tons, 320 lbs., and a delivery out of the "Theobold" of 1064 tons, 364 lbs., or an average of 145 tons, 44 lbs. That is an average of about 14 per cent.

Mr. ROCHE.—But you will concede, Mr. Olney, that of course there is no way of telling from that book, that is, there is no way of definitely ascertaining from that book that the overage of 145 tons did not result from the coal checked into the barge after the date upon which that surplus is shown. That is correct, is it not?

Mr. OLNEY.—As far as the book is concerned, the book shows exactly what I have stated. It shows an overage of 1400 lbs. on the 21st. It shows on the 24th a surplus of 57; then the next time we come to an overage we find an extremely high overage in the barge.

Mr. ROCHE.—I understand that, but as long as you have explained this to the jury, Mr. Olney, you will concede that there was a quantity of coal discharged into the barge between the date upon which

(Testimony of William S. Miller.)

the surplus was shown and the date upon which the final clearance is shown, and of course you cannot tell nor do the books show that the overage was not caused by the coal discharged into the barge at a time after that overage is shown.

Mr. McCUTCHEN.—That is incorrect, Mr. Roche.

Mr. STANLEY MOORE.—The books do show that there was an overage of over 30 tons on the barge when you read it as only 1400 lbs.

Mr. ROCHE.—I don't know to what that surplus refers.

Mr. STANLEY MOORE.—Well, it is very plain.

Mr. ROCHE.—It is admitted, may it please the Court, that in April, 1910, when the steamship "Thor" discharged her cargo at San Diego, there were left in the steamship "Thor," being a [1100—1041] part of the cargo entered at that port, 241 tons, 1030 lbs.; that the coal was retained on board the "Thor" for fuel purposes. The same admission is made respecting the steamship "Thor" for the month of November, 1911, being another month during which she discharged at San Diego. There were left upon the steamship "Thor" 101 tons, 560 lbs. of the cargo which was to be used by the steamship "Thor" for fuel purposes.

The same admission is made respecting the same steamship for the month of December, 1912, there being left upon the steamship at the time she discharged at San Diego, 46 tons, 1290 lbs. of the cargo for fuel purposes.

**[Testimony of Edmund M. Atkinson, for the Government.]**

EDMUND M. ATKINSON, a witness called for the United States and sworn, testified as follows:

Direct Examination by Mr. ROCHE.

I am employed in the office of the special agent of the treasury of the United States Government. I am familiar with Tables "A" and "B" of U. S. Exhibit 125. I have examined Table "A" for the purpose of ascertaining how often the steamship "Wellington" was discharged between January 1, 1905, and December 31, 1912, and I also examined the photographic copies of the diaries or dock-books kept by the defendant, Mills, for the purpose of ascertaining at what port the "Wellington" discharged during the above-specified period of time. I am familiar with those diaries or dock-books.

(Certain typewritten memoranda were here called to the attention of the witness.)

These memoranda were compiled by me. They represent, so far as complete cargoes were concerned, that is, a cargo discharged [1101—1042] wholly either at San Francisco or at Oakland, the discharge of the steamship "Wellington" at these ports, respectively, between January 1, 1905, and December 31, 1912. Where a part of the cargo was discharged at San Francisco or Oakland, I made no note thereof. These memoranda, to the best of my knowledge and belief, correctly, accurately and truly show every time that the "Wellington" discharged a full cargo at either of the ports mentioned between the dates

(Testimony of Edmund M. Atkinson.)

specified. The memoranda also show the difference between the out-turn weight and the bill of lading or invoice weight upon each date of discharge. The third column of the first page of the memorandum designated "Short, tons and pounds," represents a shortage when a shortage occurred between the bill of lading and the out-turn weights, while the last column which is entitled, "Over, tons and pounds," represents the case of an overage when that occurred. The first page of these memoranda shows the occasions when the "Wellington" discharged a full cargo of coal at San Francisco, together with the shortage or overage, as the case might be, while the second page discloses the discharges at Oakland, together with the shortages or overages.

(Said memoranda were here introduced in evidence for the purpose of showing a comparison between the shortage and overage of the "Wellington" during her discharge at Oakland and her discharge at San Francisco, respectively. The memoranda were marked U. S. Exhibit No. 154, and is in words and figures as follows:)

 [1102—1043]

**[U. S. Exhibit No. 154 —Statement Showing Shorts and Overs in Cargoes of Coal During Years 1904–1912.]**

STATEMENT SHOWING SHORTS AND OVERS IN COMPLETE CARGOES OF COAL IMPORTED BY THE WESTERN FUEL COMPANY DURING THE YEARS 1904 TO 1912, INCLUSIVE, AS WEIGHED IN ENTIRETY ON SCALES IN SAN FRANCISCO AND OAKLAND, CALIFORNIA; STEAMER WELLINGTON.

WEIGHED IN SAN FRANCISCO.

Arrival, Date of. Vessel.	Entry No.	Short		Over	
		Tons.	Lbs.	Tons	Lbs.
1905.					
Jan. 1	25	12	730		
May 28	6557	78	1940		
June 9	7082	66	600		
July 16	8683			19	1900
1907.					
Mar. 31	4854	24	740		
Apr. 22	6090	71	1680		
1909.					
Feb. 5	1911	70	60		
" 24	2668	56	1010		
June 21	8010	44	1270		
Nov. 17	14962	99	930		
Dec. 5	15837	71	380		
1912.					
Feb. 9	2463	201	1800		
" 21	3081	181	1800		
Mar. 10	4229			7	1680
Apr. 4	6028			1	1780
May 12	8181	32	270		
" 22	8853	104	520		
June 15	10298	108	970		
" 29	11002	22	90		
July 11	11822	66	150		
" 23	12398	29	1770		
Aug. 8	13518	6	680		
Oct. 10	17852			70	1210
" 21	19335			18	1530
Nov. 27	21429	1	390		
Dec. 11	22150			24	1560
" 29	23400			7	1900
Totals		1348	2100	151	360



## WEIGHED IN OAKLAND.

Arrival, Date of Vessel.		Entry No.	Short		Over	
			Tons.	Lbs.	Tons	Lbs.
1904.						
Oct. 18	S. F.	13271			55	2040
Nov. 1	Oak.	52			43	10
Dec. 18	"	18			79	1870
1905.						
Jan. 13		3			42	1775
" 28		8			(24	1310
					(14	1800
Feb. 13	Oak.	11			34	40
Mar. 11	"	14			(29	870
					(16	90
" 29	"	16			( 9	1340
					(20	470
Apr. 12	"	17			58	1960
May 1	"	21			91	1790
" 13	"	22			62	1920
June 24	"	28			16	715
Aug. 18	"	33			60	10
Sept. 1	"	35			22	2110
" 24	"	39			19	1120
Nov. 7	"	46			41	1990
" 22	"	49	2	810		
Dec. 6	"	51	51	1340		
" 19	"	54			10	1780
1906.						
Jan. 4		1			30	1080
" 22		4			20	920
Feb. 6	Oak.	5			6	1630
" 19	"	9			15	1800
Mar. 7	"	12			69	1610
" 21	"	13			6	1470
Apr. 5	"	17			58	2160
" 19	"	20	16	2020		
June 22	"	42			23	1660
July 13	"	72			14	860
1907.						
Mar. 2	S. F.	3252	47	570		
Sept.			62	850		
Nov. 9	S. F.	17022	2	10		
Dec.	Oak.	296	36	1080		
1908.						
Nov.	Oak.	122	66	290		
Dec. 11	S. F.	16678	43	1960		
" 27	Oak.	140	37	990		
1909.						
Mar. 25	Oak.	26			64	800
Sept. 24	"	65	27	2140		
Oct. 11	"	79	8	910		
" 27	"	95	11	440		
1912.						
Mar. 22	S. F.	5070			18	490
Apr. 16	"	6582	1	1250		
June 3	"	9475	34	90		
Sept. 23	"	16480			13	1240
Totals			449	1310	1098	410

(Testimony of Edmund M. Atkinson.)

Mr. ROCHE.—I want to direct the attention of the jury to this memorandum. The first page of this exhibit, 154, shows that the steamship “Wellington” discharged at San Francisco upon 27 occasions between the 1st of January, 1905, and the 31st of December, 1912; that upon every occasion that she discharged a full cargo of coal at port San Francisco, with the exception of seven occasions, she discharged short. The greatest amount of shortage appears to have been during her discharge on February 9th, 1912, when she was short 201 tons, 1800 lbs. February 9th, 1912, must have been the date of the final discharge. Upon the seven occasions upon which she discharged over, the total overage is 151 tons, 360 lbs., one overage, being the largest overage, was 70 tons, 1210 lbs. The total shortage during this period of time of discharging at San Francisco amounts to 1348 tons, 2100 lbs.

Q. I notice that upon the second page of this tabulation you show that the “Wellington” discharged upon three occasions at Oakland between and including October, 1904, and the 1st of January, 1905; you recall that, do you?

A. I can vouch for every item there.

Q. During that three months the “Wellington” did not discharge in San Francisco?

A. If it is not shown there the “Wellington” did not discharge in San Francisco a full cargo, that is, of the Western Fuel Company’s importations.

Q. Well, that is what I am talking about, of course.

A. Yes.

(Testimony of Edmund M. Atkinson.)

Mr. ROCHE.—The second page of the tabulation shows that commencing on October 18, 1904, the “Wellington” discharged at Oakland 42 times; that the total shortage at Oakland during those 42 times amounts to 449 tons, 1310 lbs.; that during that period of time she discharge over 1098 tons, 410 lbs. The record also shows that in discharging coal, from and including the 18th day of October, 1902, to and including the 7th day of November, 1905, there were 16 discharges, and she discharged over every time, and that during that period of time there was no shortage. [1105—1046]

(The attention of the witness was here directed to a pencil memorandum.)

This is a comparative statement made by me showing shorts and overs discharged on the Steamer “Wellington” on full cargoes where weights were taken on the scales at San Francisco and Oakland, California, years 1904 to 1912, inclusive. It is practically a summary by years of the former statement hereinabove introduced in evidence. It is a correct summary.

(Said document was here introduced in evidence as U. S. Exhibit 155, and is in words and figures as follows:) [1106—1047]



(Testimony of Edmund M. Atkinson.)

According to this summary, the "Wellington" in 1904 did not discharge at all in San Francisco.

Mr. ROCHE.—She discharged three times in Oakland, and upon none of those three times was she short, but during those three times she discharged 178 tons, 1680 lbs., in excess of the bill of lading or invoice weight. In 1905, at San Francisco, she discharged three times short, the shortage amounting to 157 tons, 1030 lbs.; and upon one occasion she discharged over, the overage being 19 tons, 1900 lbs. In 1905, while discharging at Oakland, she discharged twice short, the shortage being 53 tons, 2150 lbs., and 14 times over, the overage amounting to 576 tons, 930 lbs.

In 1906 she did not discharge at all at San Francisco. During 1906 she discharged 10 times at Oakland, once short, the shortage being 16 tons, 2030 lbs., and over 9 times, the overage being 246 tons, 1990 lbs.

In 1907 she discharged twice in San Francisco, each time short, the shortage amounting to 96 tons, 180 lbs., and in the same year discharged 4 times at Oakland, each time discharged [1108—1049] short, the shortage being 148 tons, 240 lbs.

In 1908 she discharged only in Oakland, discharging there three times, each time short, the total shortage being 147 tons, 1000 lbs.

In 1909 she discharged 5 times in San Francisco, each time short, the shortage aggregating 341 tons, 1410 lbs.

During that same year she discharged 4 times in Oakland, three times short, the shortage amounting



(Testimony of Edmund M. Atkinson.)

to 47 tons, 1250 lbs., and once over, the overage amounting to 64 tons, 800 lbs.

In 1910 she did not discharge either at San Francisco or at Oakland.

In 1911 the same situation exists.

In 1912 she discharged 16 times at San Francisco, 10 times short, the shortage being 753 tons, 1720 lbs., and over 6 times, the overage being 131 tons, 700 lbs.

During 1912 she discharged 4 times at Oakland, twice short, the shortage amounting to 35 tons, 1340 lbs.; and twice over, the overage being 31 tons, 1730 lbs.

According to this recapitulation, during these years she discharged 27 times at San Francisco, 20 times short, the shortage totaling 1348 tons, 2100 lbs.; 7 times over, the overage aggregating 151 tons, 360 lbs.

During the same period of time she discharged at Oakland 44 times, 15 times short and 29 times long, the shortage amounting to 449 tons, 1310 lbs., and the overage amounting to 1098 tons, 410 lbs.

[Endorsed]: Filed Jan. 19, 1915. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [1109—1050]

Cross-examination by Mr. McCUTCHEN.

I prepared this tabulation from U. S. Exhibit No. 125, Table "A", and from the Mills' diaries. It corresponds to and agrees with Exhibit "A." We took Exhibit "A" as the basis in almost every instance and verified it wherever possible by the Mills' diaries.

(Testimony of Edmund M. Atkinson.)

(Counsel for the prosecution here consented that the cross-examination of this witness might be suspended for the present so as to give counsel for the defendants an opportunity to examine the tabulation prepared by the witness and then recall him for later cross-examination.)

Thereupon, the following proceedings occurred :

Mr. ROCHE.—At our request, Mr. Norcross has furnished us with some of the daily sheets prepared by the defendant Mills and sent by him to the defendant James B. Smith; and the daily statements which I hold in my hand commence with July 2d, 1910, and end with July 19, 1910. Will you admit that similar daily statements were furnished by the defendant Mills to the defendant James B. Smith from the 1st of January, 1904, until and including the 31st day of December, 1912?

Mr. McCUTCHEN.—I think the only admission we would be warranted in making on our information is that statements of this nature were sent to the office and that they are the statements referred to by Mr. Norcross when he states that they were put on Mr. Smith's desk.

Mr. ROCHE.—Then we offer these statements in evidence, may it please the Court.

You will admit that these statements are practically copies [1110—1051] of the books of the defendant Mills?

Mr. McCUTCHEN.—As a matter of fact, I have never seen them, but upon your suggestion that they are we make that admission, subject to correction,

(Testimony of Edmund M. Atkinson.)

however, hereafter.

Mr. ROCHE.—Very well. And also that all of the overages or shortages which appear in the books of the defendant Mills—

Mr. McCUTCHEN.—Pardon me a moment. Mr. Olney suggests that they show the results of the books rather than being copies of the books.

Mr. STANLEY MOORE.—And they have been testified to here and the evidence is in the record with respect to them.

Mr. ROCHE.—Will you also admit that they show the shortages and the overages as they occurred upon the cleanup of the barges?

Mr. McCUTCHEN.—I think that is correct.

Mr. ROCHE.—And also the shortages and the overages which appear in the books of the defendant Mills in so far as the discharge of vessels is concerned in which coal was imported into San Francisco?

Mr. McCUTCHEN.—Yes, I think that is true.

Mr. ROCHE.—And it is stipulated that these may be considered read in evidence?

Mr. McCUTCHEN.—Yes.

(Said daily statements for said period July 2, 1910, to July 19, 1910, inclusive, were here introduced in evidence as U. S. Exhibit 156, and are in words and figures as follows, to wit:) [1111—1052]

**[U. S. Exhibit No. 156—Daily Statements July 2 to  
July 19, 1910, Inclusive.]**

WESTERN FUEL CO.

Report for July 2d, 1910.

			Tons.	Lbs.
Ex "Leelanaw"	Comax	Offshore Bunkers	533	610
"	do	" "Nanaimo"	780	1180
"	do	" "Comanche"	855	1780
"	do	" "Ruth"	483	1460
			<hr/>	<hr/>
Short 169-1690/2240 Tons			2653	550
Ex "Melrose"	Jap	Offshore Bunkers		
	Wellg	" "		
"	do	to Str "City of Para"	100	1614
"	do	" " "Siberia"	574	766
"	do	" " "Newport"	393	536
"	do	" " "Peru"	340	1403
			<hr/>	<hr/>
			1408	2079

WESTERN FUEL CO.

Report for July 5th, 1910.

			Tons.	Lbs.
Ex "Melrose"	Jap	Offshore Bunkers	1190	1860
	Wellg	" "	63	1730
	Jap	" "	259	1990
			<hr/>	<hr/>
			1514	1100
"	do	to Str "City of Para"	100	1640
"	do	" " "Siberia"	574	766
"	do	" " "Newport"	393	536
"	do	" " "Peru"	452	540
			<hr/>	<hr/>
Over 6-142/2240 Tons			1520	1242
Ex "Comanche"	Comax	"Leelanaw"		
	do	to Str "Manchuria"	270	190
[1112-1053]				

WESTERN FUEL CO.

Report for July, 6th, 1910.

			Tons.	Lbs.
Ex "Comanche"	Comax	"Leelanaw"		
"	do	to Str. "Manchuria"	615	159

WESTERN FUEL CO.

Report for July 7th, 1910.

	Tons.	Lbs.
Ex "Jethon" Wellg. Wharf Bunkers	49	1680
" do " "Melrose"	224	590
	<hr/> 274	<hr/> 30
Ex "Ruth" Comax "Leelanaw"		
" do to Str "Manchuria"	110	670
Ex "Nanaimo" Coxax "Leelanaw"		
" do to Str "Manchuria"	166	922
Ex "Comanche" Comax "Leelanaw"		
" do to Str "Manchuria"	734	495

WESTERN FUEL CO.

Report for July 8th, 1910.

	Tons.	Lbs.
Ex "Jethon" Wellg Wharf Bunkers	1218	1540
" do " "Melrose"	252	1580
	<hr/> 1471	<hr/> 880
Ex "Nanaimo" Comax "Leelanaw"		
" do to Str "Manchuria"	449	338

[1113—1054]

WESTERN FUEL CO.

Report for July 9th, 1910.

	Tons.	Lbs.
Ex "Jethon" Wellg. Wharf Bunkers	2440	1850
" do " Yard "	96	210
" do " "Melrose"	466	1761
	<hr/> 3003	<hr/> 1581
Ex "M. F. Plant" Coos Bay Yard B.	203	430
Ex "Comanche" Comax "Leelanaw"	855	1780
" do to Str "Manchuria"	734	495
" do " "Prince George"	126	195
	<hr/> 860	<hr/> 690
Over 4-1150/2240 Tons		
Ex "Ruth" Comax "Leelanaw"	483	1460
" do to Str. "Manchuria"	520	654
	<hr/> 499	<hr/> 338
Over 36-1434/2240 Tons		
Ex "Nanaimo" Comax "Leelanaw"		
" do to Str. "Manchuria"	499	338



## WESTERN FUEL CO.

Report for July 11th, 1910.

			Tons.	Lbs.
Ex "Jethon"	Wellg	Wharf Bunkers	3364	960
"	do	" Yard "	292	1220
"	do	" "Melrose"	667	601
"	do	" "Comanche"	36	50
			<hr/>	<hr/>
			4360	591
Ex "Nanaimo"	Comax	"Leelanaw"		
"	do	to Str "Manchuria"	449	338
"	do	" "Chiyo Maru"	162	420
			<hr/>	<hr/>
			611	758

[1114—1055]

## WESTERN FUEL CO.

Report for July 12th, 1910.

			Tons.	Lbs.
Ex "Jethon"	Wellg	Wharf Bunkers	3386	440
"	do	" Yard "	509	1500
"	do	" Offshore "	91	190
"	do	" "Melrose"	667	601
"	do	" "Comanche"	665	470
			<hr/>	<hr/>
			5319	961
Ex "Nanaimo"	Comax	"Leelanaw"	780	1180
"	do	to Str. "Manchuria"	449	338
"	do	" " "Chiyo Maru"	345	1876
			<hr/>	<hr/>
		Over 14-1034/2240 Tons	794	2214
Ex "Melrose"	Wellg	"Jethon"		
"	do	to Str. "San Jose"	303	1528

## WESTERN FUEL CO.

Report for July 13, 1910.

			Tons.	Lbs.
Ex "Melrose"	Wellg	"Jethon"		
"	do	to Str. "San Jose"	353	1640

WESTERN FUEL CO.

Report for July 14th, 1910.

	Tons.	Lbs.
Ex "Nanaimo" Comax Surplus		
"        do        to Str. "Pennsylvania"	107	560
Ex "Melrose" Wellg "Jethon"		
"        do        to Str. "San Jose"	353	1640
"        do        "        "        "Pennsylvania"	30	100
	<hr/>	<hr/>
	383	1740

[1115—1056]

WESTERN FUEL CO.

Report for July 15th, 1910.

	Tons.	Lbs.
Ex "Jethon" Wellg Wharf Bunkers	3386	440
"        do        "        Yard        "	509	1500
"        do        "        Offshore        "	91	190
"        do        "        "Melrose"	667	601
"        do        "        "Comanche"	665	470
"        do        "        Howard's Bunkers	1397	2130
	<hr/>	<hr/>
Short 153-1389/2240	6717	851
Ex "Comanche" Segs Offshore Bunkers		
Wellg "Jethon"		
"        do to Str. "Admiral Daperre"	100	170

WESTERN FUEL CO.

Report for July 16th, 1910.

	Tons.	Lbs.
Ex "Comanche" Segs. Offshore Bunkers		
Wellg "        "		
"        do to Str. "Admiral Daperre"	200	1190
Ex "Melrose" Wellg "Jethon"		
"        do to Str. "San Jose"	353	1640
"        do        "        "        "Pennsylvania"	370	1760
	<hr/>	<hr/>
	724	1160

WESTERN FUEL CO.

Report for July 18th, 1910.

	Tons.	Lbs.
Segs. Offshore Bunkers		
Ex "Comanche" Wellg "Jethon"		
"        do to Str. "Admiral Daperre"	200	1190
"        do        "        "        "Asia"	392	798
	<hr/>	<hr/>
	592	1988

[1116—1057]

## WESTERN FUEL CO.

Report for July 19th, 1910.

			Tons.	Lbs.
Ex "M. F. Plant"	Coos Bay			
"	do	to Yard Bunkers	187	1500
Ex "Comanche"	Segs. Offshore Bunkers			
	Wellg	"Jethon"		
"	do	to Str. "Admiral Daperee"	200	1190
"	do	" " "Asia"	593	478
			<hr/> 793	<hr/> 1668
Ex "Theobold"	Segs. Offshore Bunkers			
	Wellg.	" "		
"	do	to Str. "Asia"	40	100

**[Testimony of Charles H. Blinn, for the  
Government.]**

CHARLES H. BLINN, a witness called for the United States and sworn, testified as follows:

Direct Examination by Mr. ROCHE.

I live in San Francisco. I am at present clerk and acting [1117—1058] deputy collector of customs, and have been acting in that capacity for nearly two years. I have been connected with the service for 35 years. Before I was deputy collector of customs I was special deputy surveyor for five years. The assistant weighers are attached to the surveyor's department and they were, therefore, during the last-mentioned five years, under my jurisdiction. Prior to the month of March, 1906, the assistant weighers were paid for overtime by the importers. The compensation would be four dollars or eight dollars when the weigher worked at night. The payment was made to him direct by the cashier of customs, the money being deposited with that officer by the im-

(Testimony of Charles H. Blinn.)

porter. In the month of March, 1906, an order was issued by the department against such practice. Between the month of March, 1906, and the first day of January, 1911, assistant weighers were supposed to be compensated for overtime under an order which I, myself, issued to the chief weigher, Mr. Wooster, that these men who worked at night should be allowed a day off. It would not necessarily be the next day. No other compensation than this day off was known to the office. That was the situation until 1911. In answer to the question whether during that time any money was paid to or received by the Government for the purpose of compensating the assistant weighers, I would say I think there was an allowance made for Sunday work, but no money was paid by the importer to the Government. The assistant weighers were in fact let off for a day when they worked overtime. The ordinary compensation is paid to the assistant weighers on the first or the last of each month, and, to collect that salary, they are required to make affidavits. [1118—1059]

Cross-examination by Mr. STANLEY MOORE.

It was the practice in the old times, that is, 15 or 20 years back, for the importers to pay the assistant weighers directly for overtime; then four or five years prior to 1906 the practice was for the importer to pay this overtime to the assistant weigher through the cashier. At the present time, also, the assistant weighers are compensated in that way. The regulation by which this was brought into effect was in 1911, but I do not recall the exact date. The order which

(Testimony of Charles H. Blinn.)

I gave and which prevailed from 1906 to 1911 that the assistant weighers should be compensated for overtime by getting a day off did not mean the very next day. It meant whenever said weigher could be spared for a day. ,

**[Testimony of Charles T. Cook, for the Government.]**

CHARLES T. COOK, a witness called for the United States and sworn, testified as follows:

Direct Examination by Mr. ROCHE.

I live in San Francisco. I am now clerk in the U. S. customs service, and have been such since 1898. From 1906 to date I have also acted as deputy surveyor, having jurisdiction in this capacity, in a supervisory manner, over the assistant weighers and the chief weigher. I recall a regulation made effective during March, 1906, relating to compensation to be paid to assistant weighers for overtime. Prior to that date assistant weighers were compensated for overtime in the following manner: bills were filed by said weighers with the surveyor and these bills were recorded by him and filed with the cashier [1119—1060] of customs for collection; the cashier collected the bills from the consignee of the vessel, as a rule, through the custom-house broker. The assistant weighers would be actually paid, not by the importer direct, but through customs sources. No compensation was paid in money to the assistant weighers between March, 1906, and January, 1911, for night overtime service. We were, however, authorized by the department to compensate an assistant



(Testimony of Charles T. Cook.)

weigher for such work as he rendered at night by allowing him a day off subsequently. I know as a fact that such an allowance would be actually made and taken advantage of by the weigher. During that period of time, 1906 to 1911, when a day off would be allowed to an assistant weigher for overtime work, no money was, so far as I know, paid to the Government by the consignee or importer to be in turn paid to the assistant weigher, nor, to my knowledge, were any charges of any kind made by me on behalf of the Government, through the surveyor's office or by the authority of the surveyor, against the consignee or importer, representing the value of the overtime night service of the assistant weigher.

Cross-examination by Mr. STANLEY MOORE.

Mr. STANLEY MOORE.—Q. Was this matter about allowing the assistant weigher time off in return for working overtime a matter that was in the regulation itself, or was that some subsequent authorization that you received with respect to that?

A. It was a previous authorization.

Q. It was a previous authorization?

A. Yes, sir.

Q. And what do you mean by a previous authorization?

A. We had had a practice of compensating assistant weighers and inspectors who supervised the discharge of vessels on Sundays [1120—1061] or holidays. That was determined by the department to be unauthorized by law, but the department said that if it became necessary for an officer to work on

(Testimony of Charles T. Cook.)

Sundays or holidays witnessing such discharge or loading the collector could compensate such officer by allowing him time off subsequently.

Q. Then this regulation that you speak of in 1906 did not have any provision in it with respect to the allowing of time off, did it?

A. I don't know that I spoke of any regulation.

Q. You said here, did you not, that originally the money was paid for overtime to the custom-house weighers directly by the importer; is that your understanding? A. No, sir.

Q. When did you first become connected with the service? A. 1886.

Q. First in 1886? A. Yes, sir.

Q. And when did you become connected with the office of the Surveyor of the Port? A. 1898.

Q. 1898? A. Yes, sir.

Q. From that time on, for a period at least, you had a general supervision or something to do with the custom-house weighers, did you not?

A. More or less, yes, sir.

Q. What was the practice then with reference to compensating the custom-house weighers for overtime back in the 80's or 90's?

A. Bills were rendered and filed as I have testified, with the surveyor, who filed them with the cashier, who collected them by payment from the consignee of the vessel.

Q. How early had that been the practice, that the bills would be filed by the cashier and by him the overtime be paid to the custom-house weighers—how

(Testimony of Charles T. Cook.)

for back did that go?

A. For night service? [1121—1062]

Q. Yes. A. As far back as I can recollect.

Q. And that is a matter of over 20 years?

A. I should imagine so, yes, sir.

Q. Was there a change made in the regulations, according to your recollection, in the year 1906?

A. Yes, sir.

Q. Where is the copy of that regulation that was handed down in 1906? Are you just depending upon your recollection with respect to the provision?

A. No, sir, there was a department letter dated in November—well, I can't recollect the exact date of that now.

Mr. ROCHE.—I will give you a copy of it, if you want it, Mr. Moore.

Mr. STANLEY MOORE.—Q. But there was a letter written in November, 1906, was there?

A. No, that is too late; it was earlier than that.

Mr. ROCHE.—Yes, it was earlier.

A. (Continuing.) March 27th, isn't it?

Mr. STANLEY MOORE.—Q. So as the result of some previous authorization you had received from the department you had considered that you were entitled to allow these men extra vacation time on account of overtime? A. Yes, sir.

Q. Then so far as that letter or authorization was concerned, that was received in March, 1906, you did not understand that that even gave you that privilege?

A. I so understood because we put it into practice.

(Testimony of Charles T. Cook.)

Q. But did you get it from that authorization or from that regulation of March, 1906, or did you go back to some custom that had been here in the port for years with regard to that?

A. Yes, by analogy, if you wish, [1122—1063]

Q. That is, you sort of figured it out in accordance with or you foundationed it upon this previous custom that had prevailed in the port, did you not?

A. Yes, sir.

Q. During the years from 1906 to 1911 do you recall what officers, if any, connected with the discharge of a vessel were paid for overtime through the importer or through the Government?

A. Inspectors of customs were the only ones authorized by law to be compensated for overtime, for night service.

The inspector of customs is the supervising officer so far as the landing or discharging of the coal-laden vessels is concerned. His duties are to be there on the vessel and around to see that the discharging is going on properly. His duties are therefore different from those of the weighers in that he goes about the bunkers, patrolling or watching the discharge of the vessel, to see that the coal, for instance, which is thus discharged, is actually weighed. Sometimes two vessels are assigned to one inspector. The money was paid by the importer to the cashier and by the cashier to the inspector. The regulation or practice of the Government itself with respect to the assistant weighers in so far as Sunday and holiday work was concerned was that for each overtime day

(Testimony of Charles T. Cook.)

they should be excused for the period of a day subsequently.

Q. I am asking you whether they made the same kind of an allowance and in just the same way where the assistant weigher worked on a Sunday or a holiday during this period from 1906 to 1911 as they did when he worked on the night of a week day, and a regular working day? [1123—1064]

A. Yes. May I explain? There was a time when assistant weighers were not compensated for Sundays at all unless they worked?

Mr. ROCHE.—Q. That is, when they were paid by the day?

A. Yes, sir, when they were on a per diem basis of compensation, and at that time they received no compensation for Sundays unless they actually performed duty, so that when they did perform duty on a Sunday they were compensated for that by the Government at the expense of the collector of revenue.

(Witness continuing.) This per diem basis was in vogue in some part of the period from 1905 to 1911, but not for any considerable portion of this period.

Redirect Examination by Mr. ROCHE.

That compensation, however, was paid by an appropriation made by Congress for the expenses of the collector of revenue in the same way as the regular salary was paid. Since that time those men have been on a regular annual salary, payable in monthly installments, with Sundays off, so that subsequently



(Testimony of Charles T. Cook.)

to 1905 and prior to 1911 when the assistant weighers were called upon to work on a Sunday they would get an extra day for it.

**[Testimony of Bud Hopkins, for the Government.]**

BUD HOPKINS, a witness called for the United States and sworn, testified as follows:

Direct Examination by Mr. ROCHE.

I am, and have been for some time, timekeeper in the employ of the Western Fuel Company. The company does not [1124—1065] have in its possession all of the time-sheets or time-books of its employees since the fire in San Francisco, some of them having been destroyed possibly about two years ago when the company moved its office. I went into the employ of the Western Fuel Company as timekeeper in June, 1907, and have continued in that capacity up to the present time. I have knowledge concerning payments made to assistant customs weighers by the company representing compensation for overtime between the month of June, 1907, and the early part of 1911. The money was paid to the assistant weighers by the defendant, Eddie Mayer. He in turn obtained the money from me in cash, and I got it from the cashier, I. H. Story. I have no present knowledge concerning the person who instructed Mr. Story to pay me the cash. I could not say whether Mr. Mayer took a receipt from the assistant weighers when he gave them this money. I kept the time for the stevedores, and paid them myself by cash, and I took a

(Testimony of Bud Hopkins.)

receipt from the stevedores for each amount of cash thus paid. I kept regular weekly time-books. Opposite a particular number would appear the name of a particular employee within my jurisdiction, and the time-book would not only show the name but the hours during which the given employee worked in the week covered by the time-book. When I paid an employee for the week he would sign his name on the time-book. Mr. Mayer would sign in the time-book for the money that I gave him to be by him paid as compensation to the assistant weighers. I have no recollection, however, of any assistant weigher signing his name to any one of these time-books for compensation paid him, or of his signing any other paper. I would state from my recollection that possibly between \$250 and \$300 a year was paid from the end of June, 1907, to the first of January, 1911, for overtime to the assistant custom weighers. You (addressing Mr. Roche) [1125—1066] asked me to make a computation of the time-books for the period June 1, 1910, to December 31, 1910. So far as I know, you had not examined the books for the various years when you selected this period. The compensations to assistant weighers for this period amounted to \$240.50. In most every case I used a particular number in the time-book opposite which to insert the compensation paid by me to Mayer for these weighers, and that number was 96 as a rule but not necessarily 96. The dates appearing on the time-books would be those on which the money was paid, and that day would be a

(Testimony of Bud Hopkins.)

Saturday. (The attention of the witness was here directed by examining counsel to one item opposite the number 96 and the letters C. H. O.) The names which appear below that number and those letters are the names of the steamers which were being discharged and the items are the items of overtime. One is \$8.50 and the other \$4.00. The signature, "E. Mayer," is that of the defendant, Mayer, to the best of my knowledge. The overtime was one dollar an hour. The fraction in the item of \$8.50 may have occurred by reason of the fact that the customs officer worked during the noon hour and had his dinner sent in.

(The time-book was here offered in evidence by the United States, there being no objection, and was marked U. S. Exhibit No. 157.)

Cross-examination by Mr. STANLEY MOORE.

The period in 1910, where the amount paid was \$240, had one item in it that was unusually large. It related to the unloading of a vessel called the "Manhattan." The item was \$35.50. Therefore, one-quarter of the \$240 total was made up of this item. Such a large item is very unusual. I looked over some other books after examining this particular period. The amounts for other periods were very small. I mentioned in my direct examination [1126—1067] something about lunch. There were a good many times when the ships would have to work one hatch during the noon hour, and it was only fair, inasmuch as we requested the customs officer to stay there during that hour, that we should

(Testimony of Bud Hopkins.)

provide him with his lunch. Mr. Mayer turned the memorandum with respect to the custom-house weigher in to me. It sometimes included food and sometimes payment for overtime. He brought me the items in the form of a memorandum on a card and when I paid him the money he gave a receipt for it on the time-book, and the time-book which was signed by him shows the letters C. H. O. which indicate custom-house officer. The custom-house officer worked on the waterfront from seven in the morning until five at night, with one hour off for dinner. Oftentimes, however, the company would want to keep a hatch open during the noon hour, and, in such cases, the weigher would be paid for overtime, and, in addition, his lunch would be brought to him. Sometimes, also, the company wished to discharge a vessel on into the night, or into a part of the night, in order to finish up the ship. That would occur very often. In those cases, likewise, overtime would be paid.

BE IT REMEMBERED that, thereupon, the following testimony was given and that the following proceedings occurred:

Q. Is it or is it not the fact that all along the waterfront when mercantile concerns wanted to get freight off, or wanted to carry the operations past the regular hours of the custom-house employees, that that overtime was paid?

Mr. ROCHE.—One minute. We object to the question, may it please the Court, first, on the ground that no proper foundation has been laid, and sec-

(Testimony of Bud Hopkins.)

ondly, that it is immaterial, irrelevant and incompetent, and not proper cross-examination. [1127—1068]

The COURT.—It is not cross-examination; the objection is sustained.

Mr. STANLEY MOORE.—An exception. That is all.

(Counsel for the prosecution here explained that they were going to put the witness, Costello, back on the stand for the purpose of explaining one calculation relating to a circumstance connected with this case, which said counsel intended thereafter to argue to the jury; and counsel for the prosecution further stated that they believed it not only proper to advise the jury, but, opposing counsel, of such course.)

[Testimony of M. J. Costello, for the Government (Recalled)].

M. J. COSTELLO, a witness recalled for the United States, testified as follows:

Direct Examination by Mr. ROCHE.

Mr. ROCHE.—Q. Mr. Costello, will you take this diary of 1907; I direct your attention to January 7th.

May it please the Court, at this time, and as preliminary to the examination of the witness, I want to read to the jury a part of one of the entries which has already been introduced in evidence, one of the entries and also a drawback claim. The entry which I now hold in my hand, and which already has been introduced as an exhibit in connection with other



(Testimony of M. J. Costello.)

entries, relates to the steamer "Tellus," from Ladysmith, arriving at port San Francisco, January 18, 1907.

The consumption entry shows that laden upon this vessel, the "Tellus," were 3752 tons of coal, valued at \$15008; the ascertained weight or custom-house weight was 3645 tons.

Attached to this entry is an affidavit made by the defendant, James B. Smith, in the following language: "Pacific Mail Steamship Company. Certificate of Delivery of Imported Merchandise. Port of San Francisco, March 21, 1907. Description of Merchandise. [1128—1069] Coal By Whom Imported Western Fuel Company How Imported"—I don't know what the first word here is, but the other is " 'Steamer Tellus.' When Imported January 18—07. Where Imported San Francisco. Whence Imported, Ladysmith. Quantity 565 tons Value \$2825. Rate of Duty Paid 67c Entry Number 979."

In red ink appears the following: "Entry No. 63. Date Jan. 31 07, Tons 565. All Consumed by Entry #63. Filed Jan. 21-07.

"I, Jas. B. Smith, Vice-pres and a stockholder Western Fuel Company do solemnly swear that the Merchandise herein described was imported as herein stated; that the duties were paid thereon as herein shown, without allowance or deduction for damage or other cause, except as herein set forth, and that the said Merchandise has been delivered to Pacific Mail Steamship Co. and that no other certificate of delivery covering the above Merchandise has been issued by me. (Signed) James B. Smith,

(Testimony of M. J. Costello.)

Importer. Sworn to before me this Mar 21 1907 Geo. H. Probasco, Notary Public in and for the City and County of San Francisco, State of California. Commission expires April 11, 1909."

Now, the rebate claim is No. 63. The date of clearance indicated upon the back of the claim is January 25, 1907. The export vessel, that is, the vessel, into which the coal was laden for fuel purposes, was the "City of Para." The claim shows "Entry of coal intended to be shipped under official supervision by the Pacific Mail Steamship Company to be used for fuel on the American Steamer 'City of Para' Curtis Master, a vessel propelled by steam, duly registered under the laws of the United States, and engaged in Foreign Trade, now in port. Quantity 565 Tons. Date of Importation Jan. 18-07. Importing or Transporting Vessel, Str. 'Tellus.' Amount of duty \$378.55 J. S. H. Entry No. 979. [1129—1070] Vessel Cleared for Ancon. Pacific Mail Steamship Co. By J. S. Mallord, Attorney in Fact."

At the bottom is: "I have superintended the transfer and lading of the within described coal on board the 'City of Para' John A. Ross Inspector, F. L. Wooster, Weigher. Weight 564 2037—2240 Tons Coal D. A. W. Chenoweth, A. W. Vessel Cleared Jan 25-07."

The entry number from which I read a moment ago is No. 979, being the same number that is specified in this drawback claim.

Q. Now, Mr. Costello, the diary which you hold in

(Testimony of M. J. Costello.)

your hand is the diary kept by the defendant, Mills; that is correct, is it not?     A. Yes, sir.

Q. And with which you are more or less familiar?

A. Yes, sir.

Q. I will ask you to look under January 7, 1907, or between January 7, 1907 and January 31, 1907, and state whether there was any coal laden upon the barge "Nanaimo." Let me withdraw that question and put it in this form: I call your attention to a tabulation which I hold in my hand and ask you in whose handwriting that tabulation is?

A. It is in mine.

Q. From what did you compile that tabulation?

A. From this diary.

Q. From the diary which you now hold in your hand?

A. Yes, or, rather, the photographic copy of this diary.

Q. From the photographic copy of the diary kept by the defendant, Mills, for the year 1907; is that correct?     A. That is correct.

Q. I call your attention to the barge "Nanaimo" appearing upon this tabulation opposite January 7-31-07. Does that mean that the coal that is indicated below that was checked into the barge between those two dates?

A. Between those two dates, [1130—1071] yes, sir.

Q. The first item appearing under the barge "Nanaimo" is, "Account of Shelar, 266 tons, 1480 pounds"; that is shown by that diary is it?

(Testimony of M. J. Costello.)

A. Yes, sir, that is shown by that diary on January 7th.

Q. The next item is "Offshore bunkers, 31 tons, 1830 pounds," Will you turn to that item, please in the diary; I want to get the date upon which that coal was turned into the barge?

A. January 10th.

Q. That was checked into the barge on January 10? A. From the offshore bunkers.

Mr. ROCHE.—I desire to direct the jury's attention again to this entry, which shows that the steamship "Tellus" arrived in port January 18, 1907, 8 days after that coal was discharged into the "Nanaimo" from the offshore bunkers.

Q. Now, directing your attention to the next item appearing in this tabulation, under the barge "Nanaimo," the "Shelar," 719 tons, 750 pounds, was that also shown by the diary which you hold in your hand?

A. Yes, sir, that was put on the barge between the dates of January 9th and the 11th.

Q. And the last item appearing under the barge "Nanaimo," "Titania," voyage 184, 809 tons, 1390 pounds; that is also shown by that book?

A. Yes, sir.

Q. Making a total quantity of coal checked into the barge between the 7th and the 31st of January, 1907, of 1827 tons, 870 pounds; is that correct?

A. That is correct.

Q. I will ask you whether immediately underneath the items to which I have just directed your

(Testimony of M. J. Costello.)

attention are the names of the [1131—1072] steamers into which the 1827 tons, 870 pounds of coal is supposed to have been discharged?

A. Yes, sir, they are.

Q. And those items are likewise taken from the dock-book which you now hold in your hand?

A. Yes, sir.

Mr. ROCHE.—This says: “City of Sydney,” 251 tons, 768 pounds; ‘Coptic’ 674 tons, 276 pounds; ‘Track’ 21 tons, 1460 pounds; “City of Para,” 31 tons, 400 pounds; “Korea” 976 tons, 848 pounds. Total, 1954 tons, 1521 pounds, or an overage of 127 tons, 642 pounds. In other words, the overage upon that barge at the time of clearance, was 127 tons, 642 pounds more than had been checked into the barge; is that correct? A. That is correct.

Q. Now, I direct your attention to the barge “Theobold.” According to this tabulation, between the 21st and the 23d of January, 1907, there was checked into the barge “Theobold” 451 tons, 630 pounds; is that correct? A. That is correct.

Q. Consisting of two items, 1 offshore bunkers, 39 tons, 2170 pounds; and the “Tellus,” 411 tons, 700 pounds, making a total of 451 tons, 630 pounds?

A. Yes, sir.

Q. Can you state, from an examination of the book kept by the defendant, Mills, which you now hold in your hand, the date upon which the 39 tons 2170 pounds were laden into the offshore bunkers—I will withdraw that question and put it in this form: Let me have the date upon which the 39 tons, 2170



(Testimony of M. J. Costello.)

pounds was discharged into the "Theobold" from the offshore bunkers? A. January 21.

Q. January 21? A. Yes, sir, January 21.

Q. Do you know the date upon which the "Tellus" first commenced to discharge? A. January 18.

Q. She commenced to discharge on January 18?

A. Yes, sir, and finished on the 21st.

Q. Can you tell from that record whether during any one of those [1132—1073] three days any part of the cargo of the steamship "Tellus" was discharged into the offshore bunkers?

A. No, the records don't show any discharge to the offshore bunkers.

Q. You say the records do not show any discharge to the offshore bunkers; you are satisfied upon that point, are you? A. I am satisfied, yes, sir.

Q. But the steamship "Tellus" was being discharged on that day, and for two days prior to that day; is that correct? A. That is correct.

Q. I will ask you if, according to the records of the defendant, Mills, all of the coal discharged upon this barge "Theobold," to which you have just referred, upon the 21, 22 and 23d days of January, 1907, or on two days between those dates, aggregates 451 tons, 630 pounds discharged into the "City of Para"?

A. Yes, sir, it was.

Q. And according to those records, the 451 tons 630 pounds aggregated, when discharged into the "City of Para" 533 tons, 1637 pounds; is that correct? A. Yes, sir.

Q. There was an overage off that barge of 82 tons,

(Testimony of M. J. Costello.)

1007 pounds?      A. That is correct.

Q. Now, directing your attention to the other side of this tabulation, entitled "Recapitulation showing coal charged to steamship 'City of Para'"; does this part of the tabulation also correspond to the figures and the data contained in the dock-book which you now hold in your hand?

A. Yes, sir, they were taken from the figures just read.

Q. And those four items, appearing on the right hand side of this page, indicate the quantity of coal which, according to the records kept by the defendant, Mills, was laden into the "City of Para"; that is correct, is it not?      A. Yes, sir, [1133—1074]

Q. Now, I call your attention to these items: "Off-shore bunkers, per 'Nanaimo,' 31 tons, 400 pounds"; was that coal taken off the "Nanaimo" during that period of time covered by the date appearing on the other side of the page, that is, between January 7th and 31st?      A. Yes, sir.

Q. And then again, "Offshore bunkers, barge 'Theobold,' 39 tons, 2170 pounds"?      A. Yes, sir.

Q. The 39 tons, 2170 pounds, correspond, do they not, with the coal discharged into the "Theobold" between the 21st and the 23d of January from the off-shore bunkers?      A. Yes, sir.

Q. Into which, according to the records kept by the defendant, Mills, no part of the cargo of the steamship "Tellus" had been, up to that time, discharged?

A. That is correct.

Q. Then, from the "Tellus," according to these

(Testimony of M. J. Costello.)

records, there was discharged 411 tons, 700 pounds?

A. Yes, sir.

Q. Now, in order to make up the 564 tons, 2037 pounds, which, according to these records, was discharged into the "City of Para," an overage of 82 tons, 1007 pounds had to be taken into consideration; is that correct? A. That is correct.

Q. In other words, the 31 tons, 400 pounds, and 39 tons, 2170 pounds, and 411 tons, 700 pounds, are 82 tons, 1007 pounds short of 564 tons, 2037 pounds; is that correct? A. That is correct.

Q. Does the dock book which you now hold in your hands showing the discharge of the steamer "Tellus" indicate that up to the time that the "City of Para" was coaled any part of the cargo of the "Tellus" was discharged into any of the compartments or pockets of the offshore bunkers? A. No.

Mr. ROCHE.—We offer this tabulation in evidence.

Mr. STANLEY MOORE.—No objection.

(The tabulation was here marked U. S. Exhibit 158, and is in words and figures as follows:) [1134—1075]

# [U. S. Exhibit No. 158—Table Showing Discharges of Coal January 7-31, 1907.]

Ex "Nanaimo"—January 7/31, 1907.

	T.	Lbs.		Tons.	Lbs.
a/c "Sheila"	266.	1480	Recapitulation, showing Coal Charged to S. S. "City of Para."		
" Off. Shore Bunkers	31.	1830	Offshore Bunkers (per Nanaimo)	31	400
" "Sheila"	719.	650	" ( " Theobald)	39	2170
" "Titania"—Voy. 184	809.	1390	Tellus ( " " )	411	700
	1827.	870	Overage ( " " )	82	1007

City of Sydney	251.768			
Coptic	674.276		Total	564 2037
Track	21.1460		(Say 565 Tons)	

Whereas:  
 Certificate of delivery executed on March 21, 1907, covers  
 565 Tons Coal—Ex "Tellus" Jan. 18, 1907.

Entry #979.

NOTE: Dock Book records show that Str. "Tellus" did not discharge any coal to Offshore Bunkers, on this trip.  
 The coal laden on Barge "Nanaimo" from Offshore Bunkers was laden on January 10th, 1907, whereas Str. "Tellus" arrived on January 18th, 1907.

Over	127.642	
Ex "Theobald"—January 21/23, 1907.		
a/c Off. Shore Bunkers	39.	2170
" "Tellus"	411.	700
	451.	630
City of Para	533.	1637
Over	82.1007	

[1135-1076]

(Testimony of M. J. Costello.)

Cross-examination by Mr. STANLEY MOORE.

BE IT REMEMBERED that thereupon, the following testimony was given and that the following proceedings were had:

Mr. STANLEY MOORE.—Q. Mr. Costello, according to the Mills books, at least, when a barge is receiving coal, this may come from the offshore pockets, may it not?     A. Yes, sir.

Q. And other tons of coal may come from the yards with respect to the same barge?     A. Yes, sir.

Q. And then parts of it may be discharged directly from a ship which is at that time discharging at the bunkers?     A. Yes, sir.

Q. The coal may be carried around in the cars and dumped into the offshore pockets, and down directly into the barge below; isn't that the fact?

A. That is what the records show.

Q. And during this three or four months that may elapse before what is called a cleanup of the barge takes place, it may have come to the bunkers a number of times, may it not?

A. Yes, sir, on some occasions.

Q. Or it may have come to the bunkers that received directly coal from a number of different ships which may have been engaged in discharging there; is not that the fact?     A. Yes, sir.

Q. But these forms that are supplied, or that are in accordance with the Government regulations, only relate to single ships, or single cargoes, do they not?

A. Yes, sir.

Q. These forms that were signed here, are made



(Testimony of M. J. Costello.)

out with respect to an application for drawback on coal of the Pacific Mail Company, they are all, so far as you understand them, in accordance with the Government regulations upon those subjects, are they not?   A. Yes, sir. [1136—1077]

Q. And one of the necessary documents is the Entry of Merchandise of the particular vessel, in this case the "Tellus"; is not that correct?

A. That is correct.

Q. That is a single ship, and pertains to merchandise, or cargo imported by that particular vessel as it has been filled out there?   A. Yes, sir.

Q. This affidavit that has been signed by Mr. Smith is a brief printed form, is it not, so far as the affidavit portion of it is concerned?

Mr. ROCHE.—One minute: That question is objected to upon the ground that the affidavit speaks for itself. In the affidavit it is positively asserted that all of this coal was taken from a particular ship, which is required by the United States regulations, in order to entitle them to drawback.

Mr. STANLEY MOORE.—If your Honor please, I wanted to show what the fact was, a fact known to the Government sanctioned by the Government, and followed by every importer in this port for the purposes of convenience, whether on coal or on anything else.

Mr. ROCHE.—I don't understand what the attitude of Mr. Moore is, respecting this matter. The Government regulations require, in order to entitle a person to a drawback, that an affidavit shall be pre-

(Testimony of M. J. Costello.)

sented showing the particular vessel from which the coal was taken, and in which the coal was imported. Now, then, this affidavit, I assume, was prepared and it was sworn to by Mr. Smith, in conformity with the declarations, and of course it was presented to the Government, and the Government, assuming that it was correct, naturally paid back the drawback. There is no question about that. The Government in this case is not bound by what other people do. The Government assumes that that affidavit correctly sets forth the facts. It has a right to rely [1137—1078] upon the affidavit, as it unquestionably did in this case. The mere fact that other affidavits may have been made by other people in certain ways, and affecting other cargoes, that would in no manner affect the case here on trial.

Mr. STANLEY MOORE.—I don't know what counsel's purpose was in attempting to inject this matter into the case at all as reflecting any fault or wrongdoing, by the wildest stretch of imagination, in so far as any of the defendants are concerned.

The COURT.—I suppose the purpose of the introduction of the evidence was to show that the amount of coal could not have been imported by the "Tellus" without counting the overage.

Mr. STANLEY MOORE.—No, your Honor. The purpose of it was this: The purpose of it is to show that that particular vessel, the "Tellus," did not discharge her entire cargo of imported coal into the liner of the Pacific Mail, to which the Pacific Mail's application for drawback related. It is to show that

(Testimony of M. J. Costello.)

the whole of the cargo of the "Tellus" did not go into some particular liner of the Pacific Mail.

Mr. ROCHE.—No, your Honor, Mr. Moore does not understand the situation here, if I may suggest that. Here is the situation, may it please the Court: It is claimed in the indictment in this case, among other things, that the Government was defrauded out of certain drawbacks, by means, among other things, of false affidavits, to use the language of the indictment. Now, then, in order that the Pacific Mail Steamship Company should be able to get back from the Government the duty which the Government is supposed to have received in the first instance from the Western Fuel Company upon the importation of this coal, coal subsequently laden into the "City of Para," if I may use this particular case for purposes of illustration, an affidavit must be filed showing [1138—1079] that the particular coal which was laden into the "City of Para" and as to which this drawback is claimed, was imported upon a particular vessel, so that the Government may thereafter check up for the purpose of determining whether duty was paid upon that coal, or not. Now, then, the tabulation which we have just introduced into evidence, and which was explained by the witness upon the stand, shows two things; it shows, first, that the 565 tons was made up, among other things, by 82 tons of overage; and it also shows, may it please the Court, that, notwithstanding the fact that the affidavit does state that the 565 tons of coal had been imported upon the steamship "Tellus" at a particular time, the "Tell-

(Testimony of M. J. Costello.)

us" arriving at this port and making Entry upon a particular date, that, in fact, at least 60 odd tons of that coal had been lying in the offshore bunkers prior to the date upon which the "Tellus" arrived at the port of San Francisco; in other words, that the affidavit is incorrect and false in so far as it relates to some 60 odd tons of coal, because those 60 odd tons of coal had actually been deposited in the offshore bunker, from which the barge subsequently took that quantity of coal before the "Tellus," the steamship in which, according to this affidavit, the coal was imported, ever arrived in the City of San Francisco.

Mr. STANLEY MOORE.—That shows, if your Honor please, that I was correct in regard to my assumption. This witness has already testified respecting the overage three or four times, although I am not clear as to what was the amount of the overage according to him, or the percentage of the overage according to him, as yet. But, just now he is called to the stand with respect to these affidavits. And the whole purpose in offering them is to show that that vessel, the "Tellus," that its coal did [1139—1080] not actually go into the "City of Para" in the amount that is included within these forms. And I wanted to illustrate from this witness as a practical and feasible proposition, in view of the fact that this coal, all being imported coal, goes to make up the aggregate of a barge, maybe a dozen different vessels, and a large proportion of other vessels, they don't know which vessel it may be, or from the inshore pockets, or from the yard, or sometimes



(Testimony of M. J. Costello.)

the offshore bunkers—I say I want to show that the practice and the rule and the regulation, and the only way known or provided for or feasible under the Government's forms and plan, is to take this imported coal and make these affidavits, prepared by the custom-house brokers, approved by the federal authorities, and not necessarily relating or showing that an entire cargo of a particular vessel went into a particular barge, or from there into a particular drawback steamer. To attempt to do that, if your Honor please, would be impossible in the nature of the business. There is no machinery provided for it, and it would involve the filing of hundreds of affidavits, instead of one.

Mr. KNIGHT.—And may I suggest, if your Honor please, as long as counsel has referred to this indictment, that there is no charge, whatsoever, in the indictment, that these affidavits were prepared for the purpose of obtaining drawback duties on coal from vessels other than the vessels specified. The only charge here is that these defendants did, among other things, make or cause to be made fraudulent affidavits and statements to the officers of the Government for the purpose that the said Pacific Mail Steamship Company should claim from the United States a greater rebate or drawback on coal duties, where such drawback is permitted, making reference to American registered [1140—1081] vessels engaged in foreign trade, getting a greater sum than the true weight of said coal would entitle them to receive. That is the charge.



(Testimony of M. J. Costello.)

The COURT.—Without passing on the question as to whether you are entitled to make this proof that you offer, this is not cross-examination of this witness, because the document upon which it is based was long since introduced in evidence, and is absolutely disconnected from this witness entirely. The only thing this witness has testified to, has been as to certain calculations made upon the books of the defendant, Mills. The objection is sustained.

Mr. STANLEY MOORE.—Q. Mr. Costello, as a matter of fact, according to the Mills books, there went into that particular barge which discharged among other vessels, into the “City of Para,” coal that came from a number of different vessels, coal that had originally come into this port laden upon a number of different ships; is not that correct?

A. Yes, two or three, I think, two or three different vessels.

Q. And did not there also come into that particular barge coal from bunkers as to which there was no designation as to what ship it had come into the port on? A. Yes, sir.

Q. And perhaps there may have been coal that came into the barge from the yards, although that might not be true as to this particular instance, but that does occur with respect to the loading of these barges, according to those books, does it not?

A. Yes, sir, it does.

Q. Is it or is it not a fact that all of that coal is imported coal, whether it came in on one ship or another, as to which when loaded into an American

(Testimony of M. J. Costello.)

bottom, the owner of that bottom, who pays [1141—1082] for that coal, is entitled to a drawback.

Mr. ROCHE.—One minute: We object to the question as calling for the conclusion of the witness. It asks the witness to pass on the regulations enacted by the United States Government, and furthermore, it is not proper cross-examination.

The COURT.—The objection is sustained. The books show, and it will probably be taken as a fact, so far as the Court can determine it, that most of the coal discharged from the offshore bunkers was imported coal.

Mr. ROCHE.—Yes, your Honor, all of it, in fact, I think.

The COURT.—And it appears that the coal that was laden into the “Comanche” came from different places, among others, the offshore bunker. I assume that would be establishing, at least indirectly, that the coal was imported coal.

Mr. ROCHE.—Yes, your Honor.

The COURT.—I don’t understand that there is any claim on the part of the Government in this case that they were not entitled to drawback on this particular coal, the claim being that more drawback was claimed than they were entitled to, and that all of it did not come in on the steamship “Tellus.”

Mr. STANLEY MOORE.—That is not the purpose of this particular evidence, your Honor. In that view, it would not make any difference what vessel it was, so far as that particular contention is concerned. The witness has been examined on that,

(Testimony of M. J. Costello.)

but has not stated—and we don't know now that what proportion of overage he claims existed with respect to these barges. I can get at the matter this way, however: How many of these invoices or consumption entries would be used up in the discharge of that cargo, if there had been attempted to be made an affidavit and papers concerning each one of them claiming the coal, and the vessels, if that could [1142—1083] be done, which had been laden into the barge, and which went out of the barge?

Mr. ROCHE.—I object to the question as not proper cross-examination, as calling for the conclusion of the witness, and as immaterial.

The COURT.—The objection is sustained.

Mr. STANLEY MOORE.—Note an exception.

Q. Do you know any way from those Mills books, with respect to the coal that was actually laden into these barges, by which the claims could be segregated as to the particular ships and the proportions from the original cargoes of each which had found its way into the barge “Melrose” and from there into the “City of Para”?

Mr. ROCHE.—The same objection.

The COURT.—The objection is overruled.

A. I have not given that matter any consideration.

Mr. STANLEY MOORE.—Q. I don't want you to answer this unless the Court permits you to. Have you given the matter any consideration with respect to, say, the affidavits which were made by the officials of the Pacific Coast Coal Company, with respect to drawback on imported coal in this port?

(Testimony of M. J. Costello.)

Mr. ROCHE.—That is objected to on the ground that it is not proper cross-examination and immaterial.

The COURT.—The objection is sustained.

Mr. STANLEY MOORE.—We note an exception.

\* \* \* \* \*

Mr. OLNEY.—Q. According to Mr. Mills books, the coal which went into the “City of Para” did not come entirely from the “Tellus,” which is assigned as the source in the affidavit; is that correct?

A. That is correct.

Q. Would it have made the slightest difference to the Government, [1143—1084] or did it make the slightest difference to the government, that the “Tellus” is assigned as the source of the coal, rather than the sources which are specified in Mr. Mills’ books?

Mr. ROCHE.—That is objected to as calling for the conclusion of the witness.

The COURT.—Yes. We ought all to know that just as well as the witness. If it was imported coal, it could not, of course. The objection is sustained.

**[Testimony of D. C. Norcross, for the Government  
(Recalled—Cross-examination).]**

D. C. NORCROSS, a witness recalled for cross-examination by the defendants, testified as follows:

Cross-examination by Mr. McCUTCHEN.

Mr. McCUTCHEN.—Q. Mr. Norcross, your attention has been called to some resolutions passed by the board of directors of the Western Fuel Company, in which reference is made to financial statements;

(Testimony of D. C. Norcross.)

do you recall that testimony?     A. Yes, sir.

Q. I show you now a number of statements, beginning with one headed "Western Fuel Company, General Balance Sheet, March 31, 1907," and ending with one entitled "Western Fuel Company, General Balance Sheet, December 31, 1912," and I ask you if those are the financial statements to which you refer?

A. Those are the monthly financial statements, earnings, and expense, and general balance sheet that were referred to in the meetings.

Q. And those are the statements referred to in the resolutions which Mr. Roche offered in evidence?

A. Yes, sir, with the exception of the annual statement; sometimes there might be others—

Q. (Intg.) I called your attention specifically this morning to [1144—1085] the annual statements. I am referring now to the financial statements.     A. Yes.

I got these statements to-day from Mr. Tidwell. They have been in his possession since about December, 1913, I think, or whenever the Court order was made to deliver the records.

The statements immediately hereinabove referred to were here introduced in evidence as Defendants' Exhibit "L." Said statements are, by that certain stipulation of the parties and order of the Court hereinafter set out in this Bill of Exceptions, sent up in the original to the Circuit Court of Appeals for the Ninth Circuit and are by said stipulation and order made a part hereof in all respects as if literally



incorporated at large herein. The first of said statements (viz., that dated March 31, 1907), and the last of said statements (viz., that dated December 31, 1912) are by way of samples actually incorporated at large herein in words and figures as follows, to wit:

**[Defendants' Exhibit "L"—Financial Statements  
Dated March 31, 1907, and December 31, 1912.]**

WESTERN FUEL COMPANY.

GENERAL BALANCE SHEET—MARCH 31, 1907.

NAME OF ACCOUNT.

Capital Stock		1,000,000.00
Property Account	858,416.69	
Investment Account	254,933.26	
Construction Equipment	10,250.77	
Nanaimo Agency		1,353.78
Cash Account		27,103.57
Coal & Mdse. Bills	35,993.10	
General Bills	74,059.94	
Audited Vouchers		31,193.91
Bills Payable		3,000.00
Bills Receivable	28,500.00	
Suspense Account	10,275.00	
Suspended Insurance	323.25	
Western Fuel Co. Cement Account	11,640.53	
“ “ “ Coal Account	269,001.21	
[1145—1086]		
Operating Expenses	363,130.85	
San Francisco	3,833.89	
Nanaimo	359,296.96	
Gross Earnings		484,524.07
San Francisco	118,411.50	
Nanaimo	366,112.57	

Cash Account, Nanaimo	38,816.29	
Coal       "       "	19,685.60	
Accounts Collectible, Nanaimo	17,441.18	
Store Stock       "	46,655.50	
Farm Produce       "	2,796.77	
Accounts Payable       "		110,515.38
Suspense Account       "	13,315.38	
Suspended Insurance       "	2,618.61	
Suspended Taxes       "		1,752.75
Personal Injury Fund		2,332.28
Western Bldg. Material Co.,	44,700.58	
Adjustment Account		8,917.34
Profit & Loss		1,192.24
Depreciation Account		29,412.77
Surplus Account		401,256.42
	<hr/>	<hr/>
	1,102,554.51	1,102,554.51

## WESTERN FUEL COMPANY.

## STATEMENT OF EARNINGS AND EXPENSES.

MONTH OF MARCH, 1907, AND FISCAL YEAR TO MARCH 31, 1907.

	Month of March 1907.	Fiscal year to March 31/07
EARNINGS:		
Mine Earnings	105,095.57	296,748.97
Gross Profit on Coal Sales	24,092.50	60,892.26
Store Earnings	538.61	1,507.95
Miscellaneous Earnings	407.04	1,279.55
Estate Earnings	1,224.57	3,864.84
Protection Ferry Earnings	610.00	1,819.00
	<hr/>	<hr/>
Total	131,968.29	366,112.57
Coal Account Earnings	53,750.64	101,814.00
Rental Mission St. Bunkers	1,000.00	3,000.00
Profit on Investments	3,469.50	13,597.50
	<hr/>	<hr/>
Total	58,220.14	118,411.50
Total Earnings	190,188.43	484,524.07

EXPENSES:

Mine Expenses	125,266.10	345,132.86
Development Shaft No. 1	1,244.76	3,832.24
Sacking Acct.	16.18	
Commissions & Exchange	983.41	2,435.18

[1146—1087]

Estate Expenses	2,818.26	6,448.68
Protection Ferry Expenses	605.60	1,646.37
Donations	97.10	345.00

Total	131,031.41	359,296.96
-------	------------	------------

GENERAL EXPENSES:

General Office Salaries & Exp.	881.84	2,537.44
Interest & Discount	29.62	1,188.75
Insurance	35.90	107.70

Total	947.36	3,833.89
-------	--------	----------

Total Expenses	131,978.77	363,130.85
----------------	------------	------------

NET EARNINGS	58,209.66	121,393.22
--------------	-----------	------------

WESTERN FUEL COMPANY.

GENERAL BALANCE SHEET.

DECEMBER 31, 1912.

INVESTMENT ACCOUNT	132,438.98
--------------------	------------

CONSTRUCTION & EQUIPMENT	425,456.64
--------------------------	------------

PROPERTY ACCOUNT	674,793.51
------------------	------------

ACCOUNTS RECEIVABLE:—

Coal & Mdse. Bills S. F.	625.00	
Coal Bills S. F.	418,652.89	
Coal Bills Oakland	36,535.07	
General Bills S. F.	38,221.42	
Bills Receivable S. F.	36,083.81	
Coal Bills Nanaimo	129,500.38	
Bills Collectible, Nanaimo	2,136.84	
Mdse. Bills Nanaimo	7,823.69	
		669,579.10

COAL ACCOUNTS:—

San Francisco	22,779.03	
Oakland	26,147.31	
Nanaimo	2,772.45	
		51,698.79

S. S. "THOR" & OWNERS		5,936.28
SUSPENDED INSURANCE:—		
San Francisco	4,063.18	
Nanaimo	4,884.94	
	<hr/>	8,948.12
CASH ACCOUNTS:—		
San Francisco	13,785.90	
Nanaimo	29,716.83	
	<hr/>	43,502.73
STORE STOCK:—		
San Francisco	2,019.16	
Nanaimo	93,057.77	
	<hr/>	95,076.93
SUSPENDED TAXES:—		
San Francisco		799.69
FARM PRODUCE		8,118.68
SUSPENSE ACCOUNT S. F.		15,401.61
OPERATING EXPENSES:—		
[1147—1088]		
San Francisco	444,747.29	
Nanaimo	2,007,738.80	
S. S. "THOR" Operating	11,190.50	
	<hr/>	2,463,676.59
BRIQUETTE PLANT		7,707.54
LAND SALES CONTRACTS		157,433.12
PROFIT & LOSS		2,115.25
CAPITAL STOCK		1,000,000.00
AUDITED VOUCHERS:—		
San Francisco	107,098.17	
Nanaimo	44,650.55	
	<hr/>	151,748.72
BILLS PAYABLE		368,197.48
WESTERN BUILDING MATERIAL CO.		79,044.75
PAY CHECK ACCOUNT		138,273.10
PERSONAL INJURY FUND		9,937.84
DEPRECIATION ACCOUNT		144,012.59
GROSS EARNINGS:—		
San Francisco	519,911.27	
Nanaimo	2,215,657.90	
	<hr/>	2,735,569.17
SURPLUS		122,025.07
GORDON, James, Janet & Jane		4,999.00
NANAIMO Agency		542.50
BRYDEN, ROBT.		5,333.34
CUMBERLAND COAL CO.		3,000.00
	<hr/>	<hr/>
	4,162,683.56	4,762,683.56

WESTERN FUEL COMPANY.

STATEMENT OF EARNINGS AND EXPENSES.

MONTH OF DECEMBER, 1912, AND FISCAL YEAR TO  
DECEMBER 31, 1912.

EARNINGS:	Nanaimo	California	Month of	Fiscal Year
			Dec. 1912	to Dec. 31, 1912.
Mine Earnings	149,838.07		149,838.07	1,813,700.43
Gross Profits on Coal Sales	24,473.62		24,473.62	255,735.13
Store Earnings	378.69		378.69	12,255.03
Miscellaneous Earnings	342.39		342.39	6,608.55
Estate Earnings	10,218.03		10,218.03	48,985.29
Railroad Earnings	452.19		452.19	6,675.47
Stevedoring Earnings	1,492.95		1,492.95	19,092.05
Saw Mill Earnings	2,391.10		2,391.10	49,999.37
Sacking Earnings	4.88		4.88	106.58
Western Transport Earn- ings				2,500.00
Gross Profits on Coal Sales		28,900.00	28,900.00	283,309.64
Miscellaneous Earnings		408.81	408.81	8,760.01
Premiums		409.73	409.73	5,890.42
Profits on Investments		5,750.00	5,750.00	12,683.00
Discharging Earnings		5,095.54	5,095.54	99,233.11
Trimming Earnings		1,180.95	1,180.95	18,624.50
Team Earnings		3,132.99	3,132.99	35,695.33
Barge Earnings		4,928.59	4,928.59	55,715.26
Totals	189,591.92	49,806.61	239,398.53	2,735,569.17
S. S. "Thor" Earnings				115,211.33
TOTAL EARNINGS			239,398.53	2,850,780.50

[1148—1089]



			Month of	Fiscal Year
	Nanaimo	California	Dec. 1912	to Dec. 31, 1912
EXPENSES:				
Mine Expenses	153,535.21		153,535.21	1,901,399.20
Commission & Exchange	3.72		3.72	18.02
Estate Expenses	2,475.89		2,475.89	41,915.45
Donations	150.27		150.27	2,277.33
Stevedoring Expenses	1,489.21		1,489.21	16,079.21
Saw Mill Expenses	2,790.88		2,790.88	46,049.59
Repairs		563.63	563.63	7,882.31
Storage		1,577.42	1,577.42	8,268.83
Delivering		3,828.45	3,828.45	40,754.03
Rentals		5,510.00	5,510.00	66,935.00
Stationery & Printing		53.49	53.49	649.01
Office Salaries & Expenses		3,070.26	3,070.26	35,250.00
Taxes		286.07	286.07	3,336.60
Insurance		489.10	489.10	5,673.19
Other Expenses		642.43	642.43	7,891.95
Discharging & Storing		4,231.71	4,231.71	65,534.14
Trimming Expenses		864.20	864.20	14,250.53
Team Expenses		2,697.53	2,697.53	34,882.43
Barge Expenses		3,186.37	3,186.37	45,835.00
Totals	160,445.18	27,000.66	187,445.84	2,344,881.82
S. S. "Thor" Expenses				126,401.83
Totals			187,445.84	2,471,283.65
GENERAL EXPENSES:				
Gen'l Office Salaries & Exp.			9,843.93	77,912.86
Rentals			550.00	3,575.00
Stationery & Printing			79.95	607.73
Advertising			332.50	3,076.30
Excise Tax			268.44	3,221.27
Franchise Tax			291.55	1,250.00
Interest & Discount			1,334.80	17,961.11
Totals			12,701.17	107,604.27
TOTAL EXPENSES			200,147.01	2,578,887.93
NET EARNINGS:	29,146.74	22,805.95	39,251.52	271,892.58
SUMMARY:				
Nanaimo Net Earnings			29,146.74	207,919.10
California Net Earnings			22,805.95	182,768.25
Totals			51,952.69	390,687.35
Deduct General Expenses			12,701.17	107,604.27
			39,251.52	283,083.08
Deduct S. S. "Thor" loss				11,190.50
NET EARNINGS:			39,251.52	271,892.58

[1149—1090]

(Testimony of D. C. Norcross.)

Q. It is suggested, Mr. Norcross, that the minutes of the company from the beginning, refer to financial statements; are these the first financial statements that were prepared, that is, for March, 1907, was that the beginning of those statements? A. Oh, no.

Q. Where are the financial statements prior to that time?

A. Prior to April, 1906, they were burned. No monthly statements were made during 1906 after the fire, just the annual statement, a statement, I think, at the end of December, and then that was the first statement that is referred to in the minutes of the directors meetings after the fire, a monthly meeting.

Mr. ROCHE.—Q. Were you always present at the meetings of the board of directors, Mr. Norcross?

A. Yes.

Government rests.

The above and foregoing (including therein, also all exhibits which are by that certain stipulation of the parties and order of the Court hereinafter recited, transmitted in the original to the Circuit Court of Appeals for the Ninth Circuit, and by said stipulation and order made a part hereof in all respects as though incorporated at large herein) contains all of the evidence of any and every character given by the Government in opening its case and all of the proceedings thus far had upon the trial of this cause.  
[1150—1091]

The defendant, John L. Howard, having died since the proceedings last hereinabove set out, the Court at this point, on motion of counsel for the Government,

(Testimony of D. C. Norcross.)

made an order dismissing the indictment as against him. Thereupon, Edward J. McCutchen, Esq., moved, on behalf of all of the defendants and on behalf of each of them, for an order dismissing the indictment as to each and all of them, and, also, for an order for an instruction to the jury to return a verdict of not guilty; and this motion having been argued by Mr. McCutchen on behalf of all the defendants, and, particularly, on behalf of the defendants, Robert Bruce and Joseph L. Schmitt, and by Samuel Knight, Esq., on behalf of the defendants, Edward J. Smith, James B. Smith, F. C. Mills and Edward H. Mayer, and by Peter F. Dunne, Esq., on behalf of the defendant, Sidney V. Smith, and argument in opposition to said motion having been made by Matthew I. Sullivan, Esq., the Court then duly made an order withdrawing this cause from the jury so far as the defendants, Sidney V. Smith, Robert Bruce and Joseph L. Schmitt, were concerned and submitting to the jury the cases of James B. Smith, F. C. Mills, Edward H. Mayer and Edward J. Smith; to which ruling and order of the Court declining to grant the aforementioned motion in respect to said last-named defendants, James B. Smith, F. C. Mills, Edward H. Mayer and Edward J. Smith, said defendants and each of them then and there duly and regularly excepted.

Thereupon, the introduction of evidence for and on behalf of said last named defendants and each of them was begun and the proceedings were as follows: [1151—1092]

**[Testimony of Arthur Mullan, for the Defendants.]**

ARTHUR MULLAN, a witness called for the defendants and sworn, testified as follows:

Direct Examination by Mr. STANLEY MOORE.

Since October, 1911, I have been in the employ of the Western Fuel Company. I would consider that my position is now that of general foreman, in which capacity I have charge of the coal barges and of the stevedores and hatch-tenders. I have been in this particular position since about the middle of December, 1911. My duties include the discharging of the coal barges, by which I mean that I get the barges alongside of the vessel that requires coal and notify the hatch-tender to get his gang of men and to commence coaling the vessel. I also have charge of the shifting about of the barges. My predecessor as general foreman was David Powers. I succeeded him about the 15th or 16th of December, 1911. Prior to the beginning of my employment with the Western Fuel Company in October, 1911, I was employed by the Pacific Coast Coal Company, with which company I had been associated since the Black Diamond sold out to said company, which I think was in the month of May, 1904. I was first general foreman and later superintendent for the Pacific Coast Coal Company. As general foreman I had charge or general supervision of barges. From 1881 to 1904 I was in the employ of the Black Diamond Coal Mining Company as their general foreman, so that I have been employed in the coal business in San Francisco in the capacity of a general foreman almost continu-

(Testimony of Arthur Mullan.)

ously since 1881.

At or about the time I took charge of the barges of the Western Fuel Company in December, 1911, I told the hatch-tenders to keep the tubs evenly filled. The hatch-tenders' duties are to hire the gang of men that shovel. I have nothing whatever to do [1152—1093] with that matter. I do not suppose I am personally acquainted with more than five or six men who are working on barges. The hatch-tender of one crew is Frank Wilson and of the other crew Andrew Rookers. These are the regular and steady hatch-tenders at the present time. They were in the employ of the Western Fuel Company when I first joined the company. I have no charge or supervision whatever over the stevedores who are employed about the bunkers in the unloading and discharging of vessels bringing imported coal into the port of San Francisco. These men, I believe, are under the supervision of Mr. Schultz. In other words, I am foreman of the gangs on barges and Mr. Schultz of the gangs on bunkers. In the performance of my duties I may have to be present at the coaling of a steamer at the Pacific Mail Dock or at the Jap Wharf No. 34. I get a barge alongside of a vessel and notify the hatch-tender to get a gang of men and start in coaling the vessel. I may have more than one vessel coaling at a time; in which case, I go from one to the other during the coaling operations. I have at times observed the customs-house weigher taking weights at the Pacific Mail Dock. I have observed that they weigh four tubs at a time. The



(Testimony of Arthur Mullan.)

tubs that are weighed and the tubs that are not weighed are kept as even as possible according to my observation. I have nothing whatever to do with the loading of coal into barges at the sides of the bunkers. I have no idea as to the exact quantity of coal that is loaded into a particular barge at the bunkers. I don't know whether in the discharge of a particular barge it runs either short or over. I have nothing to do with that. I have never given instructions to those hatch-tenders to overload the tubs that are weighed and to underload the tubs that are not weighed; nor have I ever given any instructions that [1153—1094] the tubs that are to be weighed are to be filled with fine coal and lump coal mixed together, and the other tubs filled with lump coal. Nobody to my knowledge has given such instructions to the hatch-tenders. When a particular barge is to coal a vessel I communicate with the hatch-tender to get his gang of men to go to work on the barge. As to what men he shall get, I make no suggestion; that is entirely his province.

Cross-examination by Mr. SULLIVAN.

I was first employed by the Western Fuel Company through Mr. James B. Smith at the time when the Western Fuel Company purchased the Pacific Coast Coal Company, with which list-named company I was then associated as superintendent. Between October 23d and the middle of December, 1911, I was working around the yard of the Western Fuel Company. It was about the 15th, 16th or 17th of December that I gave those instructions to the

(Testimony of Arthur Mullan.)

hatch-tenders to keep the tubs which were weighed and the tubs which were not weighed evenly filled. I cannot recall to which hatch-tender I first gave those instructions, nor the date, nor the time of day, nor who was present, nor on which barge the instructions were given, although I believe they were given on one of the barges. I am not positive as to which steamship was being loaded at the time, but I think it was the "Siberia." I have given those instructions to both Frank Wilson and Rooca, but I can't recall what day. The instructions were verbal. I cannot recall at what other places I gave instructions to either one of those two hatch-tenders. My life is a busy life. It was shortly after I was put in charge of the barges that I gave those instructions—a few days after. I did not give those instructions to both hatch-tenders on the same day. I could not say where I gave the instructions to the second hatch-tender, nor on [1154—1095] what barge, nor what ship was being loaded with fuel at the time, nor whether anybody else was present. It seems to me that I have given such instructions more than once to one or other of the hatch-tenders, but I am not positive about that. The reason I gave instructions to the hatch-tenders to load the tubs evenly was this: Because the tubs on the occasion when the instructions were given were going up very fast, there being at the time a large space where we were dumping the coal into the vessel with consequently very little trimming to be done. I therefore told the hatch-tender to be sure and keep the tubs filled up evenly. I did

(Testimony of Arthur Mullan.)

not give these instructions with reference to a particular barge that was at one time being unloaded into one of the steamships. The buckets, as I have said, were going up fast and I told the hatch-tender to load the buckets that were going up fast evenly. A custom-house weigher is always present when we are handling coal. I cannot give the name of the custom-house weigher who was present on that particular occasion, however. I don't know a half dozen of the custom-house weighers. I doubt if I know the names of as many as that. I cannot recall the circumstances under which I gave the instructions to the second hatch-tender. I do remember that the tubs were then going up fast. When I gave instructions to the first hatch-tender I had just taken charge of the barges. I think I was aboard a barge at the time. I do not remember the day of the month or the month or who was present or what barge it was or whether both hatch-tenders were on the same barge or on what barge "Rooca" was on that occasion. I did not give both hatch-tenders instructions on the same day, but, to the best of my recollection, spoke to one on one day and the other on another day. It was not because I had noticed [1155—1096] they were overloading the tubs that I told them to load the tubs evenly. It was because the tubs were going up fast and one of the tubs seemed not to be as full as it ought to be; that is why I told them to fill the tubs evenly. When I first took charge there I notified the hatch-tenders to be careful and have the tubs filled evenly. At that time Mr. Mills took me

(Testimony of Arthur Mullan.)

to the barges and told me to see that the tubs were kept evenly filled. I believe I was on the "Siberia" at the time and I think that Mr. Mills gave me that instruction in December. Nobody else was present. The "Siberia" was at one of the mail docks, either Pier 42 or 44; I am not sure which. Said instructions from Mr. Mills were verbal. The hatch-tenders were not present at the time. It was within a day or two after I received said instructions from Mr. Mills, or it might have been on the same day, that I in turn gave the instructions to the hatch-tenders. In the performance of my duties I was located at different wharves, wherever the steamers that are being coaled happen to be moored. It is not my duty to see that the barges are loaded with coal. My duty is to see that the barges having been previously loaded with coal are brought to the steamships to discharge the coal. It is not part of my duty to remain upon the barges, though I am, of course, present occasionally when the coal is being transferred from the barge to the steamship. I am thus often, but I could not say how often, on the barges. I am off and on them several times a day. When I go aboard a barge I remain perhaps fifteen minutes or half an hour. It is not a fact that my duties are at an end once the barge is brought alongside the vessel which is to be coaled. It is true that the hatch-tender has exclusive control of the barge when unloading, but he is under me and subject to my orders. After every steamer is finished [1156—1097] I ask the tallyman how much coal the vessel



(Testimony of Arthur Mullan.)

has taken and thus see the weight of coal discharged from any particular barge into any particular steamship.

It is not a fact that the occasion shortly after I took charge of the barges in December when I told the hatch-tenders to keep the tubs evenly loaded is the only occasion I gave such instructions. I gave the same instruction once when they were hoisting the tubs very fast and I may have given that same instruction at other times. Mine is a busy life and I cannot remember the particular times. I cannot say whether after I gave those instructions the barges discharged more coal into the steamships than the barges had received. I have nothing to do with and know nothing about the out-turn. When I said that I found out from the tallyman the weight of the coal laden into a particular steamship, I did not mean to say that I would know how much coal had been transferred from each barge, because there might be three or four barges participating in the loading of the vessel and I would simply see the summary of the weight at the end without indication as to what portion of the total coal came from each particular barge. I did not ascertain the amount of coal that was loaded into a particular barge. I had nothing to do with and therefore did not ascertain the amount of coal taken out of a barge at the time of her cleanup. It was not a part of my duty to ascertain the amount of coal that was taken out of the barges after being loaded. In answer to the question whether I know the only way I could



(Testimony of Arthur Mullan.)

ascertain whether the tubs were evenly filled or not when they were weighed or not weighed was to ascertain the amount of coal taken out of the barge and compare that amount with what went into the barge, I would say the only way I would know about what the tub weighs was in observing the tub going up out of the hold; and seeing whether or not it was full. I have no knowledge as to the amount of coal that [1157—1098] was put into the barge or the amount that was taken out of her. When I visited a barge I might remain on her a half hour or longer; perhaps sometimes an hour. I cannot very well recollect; I am circulating around. I never gave instructions to the men who were shoveling below in the hold of a barge. My jurisdiction did not extend to them. They were under the hatch-tender's control. The hatch-tender, however, never indicated the tubs that were to be weighed. The customs weigher did that. The customs weigher I have noticed notified the hatch-tender to put such and such a tub on the scales. He would give the order first about getting a tub weighed. As a general rule, I observed that four tubs would be weighed at a time. In answer to the question whether I have ever seen more than two rounds of tubs weighed on a particular day or on a particular barge, I would say that that was something I did not give much attention to. I would simply be passing by and notice that they were taking four tubs and weighing them; so, also, I could not be positive whether I have on any one day seen a round of tubs weighed. I didn't have anything to do with

(Testimony of Arthur Mullan.)

the weighing. I could not say how many tubs I have seen weighed in this present month of January, nor whether in said present month I have seen more than a round of tubs weighed on any one day. I have seen them weighing a couple of times this month, but I have not stopped to see them weigh the round. Last year I saw a round of tubs weighed more than once on a particular barge—that is, to say, I believe I did. I will swear positively that I saw one round of tubs weighed last year, though I could not say where. We have four barges. There were four tubs in that round. I have seen a round of tubs weighed this year. I could not specify the time. I have seen several rounds; that is, four tubs at a time weighed this [1158—1099] year. I could not tell you how many rounds, but it was more than one. It was at the Jap steamer; also at the San Juan. I did not take any particular notice as to how the tubs were filled, but they were filled apparently even so far as I saw. I could not tell you how many rounds of tubs I saw weighed on all the barges put together last year, but it would be more than two. It would be impossible for me to remain for all the rounds. I simply observed in passing from one barge to another in the course of my duty that rounds of weights were being taken. I would say that I saw such rounds taken more than half a dozen times. I simply saw the weights taken consequently, so to speak, as I was passing by. I never went there expressly for that purpose. In answer to the question whether I just happened to be accidentally on the ground and

(Testimony of Arthur Mullan.)

paid no particular attention to the weighing, I would say I would observe the tubs when going on the scales evenly filled, but the tubs that were weighed were not the only ones I observed. I would also see the tubs going up that were not weighed and, of course, they were evenly filled. I have not made a statement to this same effect to counsel on the other side before I took the stand, but, of course, I talked to said counsel. I told counsel what I knew about the tubs being evenly filled. Mr. Mills told me to see that they were so filled. It is correct that I could not be on the barges much of the time owing to the diversity of my duties, but it is not true that I was seldom on the barges. I was going constantly from one to the other. When you ask me whether I know that the only way I could determine that the tubs were evenly filled was by comparing the intake of the barges with their output, I would say that I knew nothing about that and that I simply observed the tubs to see whether or not they were evenly filled. I certainly do not [1159—1100] remember the "Melrose" taking coal on June 4th and June 8th, 1912, and turning out 12 per cent more coal than she took on board, nor do I remember the "Nanaimo" taking on coal September 17th and October 9, 1912, and turning out 11 per cent more coal than she took on board; and I certainly do not know that practically every barge over which I had charge in December, 1911, and up to December 31, 1912, discharged more coal into the steamships than they took aboard.

The hatch-tender is under me. I do not give him

(Testimony of Arthur Mullan.)

instructions about employing stevedores. It ought to be the duty of a hatch-tender to get the very best men he can. It is not a fact that the amount of work and the character of the work which the shovelers in the hold do is determined by the amount of coal taken into the hold of the vessel or from the barge at a given time. It depends on the conditions; conditions being right, the value of the service rendered by the shovelers is determined by the amount of coal which they shovel during a given time, always provided, of course, that there is a good large opening to dump the coal into, and that is not determined by the weight of the coal taken altogether out of the barge within a given time. The conditions are so contrary in that line of work and sometimes you will get a run of work on a vessel for one or two or perhaps three hours, as the case may be; then the coal gets blocked up and the men have to clear away the coal, and then they cannot do such good work. I do not get the weight of coal taken from the barge at a certain time from any particular person. I may ask the tallyman how much we did for the day. It is my duty to ascertain how much coal has gone into the vessel during the day, but it certainly is not my duty to ascertain the total amount of coal unloaded from a barge into any particular ship. I do not get [1160—1101] these weights simply through curiosity. I turn them into the office. It is my duty to turn the results for the day's work into the office. I do not get the total amount of coal taken from any barge and put into any ship. I may or may not know the amount of



(Testimony of Arthur Mullan.)

coal that has been taken from the barge. All that my duty requires me to know is the day's work. I get no slip from the hatch-tender on the work of the day; no written memorandum from him. I make a report to Mr. Mills showing the amount of coal discharged during a day and that is the end of my duty. The report is usually verbal. I believe Mr. Hopkins kept the books of Mr. Mills while the latter was away. I never made any entries myself in those books. As to the question how often I would call on Mr. Mills during my service from December, 1911, to the present time, I would say that I would sometimes call on him once or twice a day; sometimes I would not see him for a whole day, but would telephone him. I never took the weights in writing to Mr. Mills' office or to Mr. Smith's office, or to any other office. If Mr. Mills happened not to be in his office I would make a memorandum on a piece of paper and leave it in his office; if he were in his office I would tell him orally. That has been my practice up to the present day. I would repeat that I was never curious to ascertain whether the coal that came off any particular barge exceeded or equalled the coal that went into that barge.

Redirect Examination by Mr. STANLEY MOORE.

It was from the tallyman and not from the hatch-tender that I used to get the weights for the day. The hatch-tender had nothing to do with that matter.

[1161—1102]



**[Testimony of Frank Wilson, for the Defendants.]**

FRANK WILSON, a witness called for the defendants and sworn, testified as follows:

Direct Examination by Mr. STANLEY MOORE.

I have resided in San Francisco all my life. I am a stevedore by occupation. At present I am in the employ of the Western Fuel Company and have been with that company since they bought out John D. Rosenfeld about ten years ago. Before that I was foreman or hatch-tender for Rosenfeld who operated the barges "Theobold," "Nanaimo," "Ludlow," "Corsair" and "Melrose." I worked for the Rosenfelds something like six years. I have been hatch-tender for the Western Fuel Company during the entire period of my employment with them. I employ the gang or crew that does the shoveling of coal on the barges. The crew is composed of eight men in the hold, the engineer and myself, and, on one barge, we have two dumpers, that is the "Theobold"; the other barges are all self-dumpers. The instructions that I give to the shovelers are that the buckets are to be kept even at all times. I never have given instructions to the men to overload the buckets when weights are to be taken and to underload them when weights are not to be taken. I have not given instructions to men to go into the fine coal or mix the fine with the lumps when weights are to be taken. When I say that when the tubs are filled they go onto the scales whether they contain fine or lump coal, I mean that when the custom-house officer orders us to take weights I have to put the tub on the

(Testimony of Frank Wilson.)

scales whether it contains lump or fine coal. When a barge is loaded, the fine coal is amidships; that is in the center, and the lump coal is in the wings. When weights are called for the shovelers put in whatever coal happens to be in immediate proximity to the then location of the buckets. In other words, they fill the tubs with [1162—1103] whatever coal may be handiest. I do not know when the customs-house officer is going to take weights. The weights are called for about every hour, and, if things are going lively, perhaps every three-quarters of an hour. Perhaps the customs weigher will take a round of weights one at a time; at other times the whole four. Generally he weighs four tubs at a time, but that is not the universal rule; it depends upon the particular weighers. My experience, both with John D. Rosenfeld and with the Western Fuel Company, is that as a general thing one tub in fifteen or four in sixty are weighed. As to the number of tubs weighed at the same time, sometimes it is four, sometimes two, sometimes three and sometimes one. I presume they weigh four the oftenest. When I say that weights are sometimes taken every three-quarters of an hour when things are going lively, or according to how fast things are going, I mean that when we start a job they have a bigger space in the bunkers, and, of course, when the pile comes up it don't go so fast and you have to allow time for the trimmers inside the bunkers of the ship to get the coal away; that causes delay. When things are running lively, about 90 or 100 tubs an hour will go up on the "Theobold,"

(Testimony of Frank Wilson.)

while the "Comanche" or the "Ruth," having bigger tubs, don't send up so many. When things are running slow, as for instance when we are finishing off a bunker, about 40 or 50 tubs an hour will run up. When the tubs are running lively the custom-house officer calls more often for weights than when they are running slow. I have no way of telling when a custom-house officer is going to call for a weight. When he does say that he wants a round of weights I have to give the engineer a signal that the tubs are going on the scales. I give this signal by hollering out on all the barges except two; on those I use a whistle. In addition to the custom-house officer, [1163—1104] the weigher or tally clerk for the Pacific Mail Steamship Company is present when we are loading the liners of that company. His name is Park. Sometimes Mr. Ed. Smith is also present, but the majority of the time he is not. We try to keep the tubs that are not weighed, as well as the tubs that are weighed, even. If a tub comes up that is not even we jog the men's memory and tell them to keep the tubs filled. When the customs officer says he wants to take a round of weights the tubs are sometimes at the pile and sometimes at the square of the hatch. By 'at the pile' I mean the tubs are being pushed into the heaps of coal on the barge. Sometimes, again, the customs officer may order us to put the next tub on the scales when the empty tub is just coming down. The tubs are all filled and that is all there is to it; the customs weigher puts them on the scales if he wants the tubs weighed. The tubs

(Testimony of Frank Wilson.)

are supposed to be kept evenly filled. Those are my instructions to the shovelers. So long as I have been working on the waterfront, whether at the time of the Rosenfelds or since the Western Fuel Company took over the business, the weights have been taken by the customs weighers with just about the same frequency as they are now taken. During the ten years that I have been with the Western Fuel Company, the men working under me have always kept the tubs on the barges even; both the tubs that were weighed and the tubs that were not weighed.

Cross-examination by Mr. SULLIVAN.

I am now, and have been for the last ten years, employed in the same capacity by the Western Fuel Company. It has always been the rule to keep the tubs even. I believe Mr. Mills first gave me instructions to that effect about ten years ago. [1164—1105] That was at a time when we were both employed by Rosenfelds' Sons. It was always the custom to keep the tubs even. I remember distinctly getting those specific instructions from Mr. Mills when I began working for the Rosenfelds. He also gave me those instructions later on while I was with the Rosenfelds. They were given verbally. I would not say for sure, but I believe I got those instructions more than once while I was with the Rosenfelds. I could not say what year, but Mr. Mills also gave me the same instructions while I was in the employ of the Western Fuel Company. I could not give the date. The instructions were not in writing. The time may have been within one year or two years

(Testimony of Frank Wilson.)

after I began working for the Western Fuel Company. He told me to keep the tubs always even and to have no trouble with the customs weigher. It might have been earlier than within the last five years that Mr. Mills so instructed me. I know it was always my duty to see that the tubs were filled evenly. I could not say how often, but I know Mr. Mills gave me instructions to keep the tubs even at all times. I have been talking lately with Mr. Mills, but I never spoke a word to him in regard to the matter on which I am now testifying. I have never spoken to Mr. Smith in my life, nor have I spoken with anyone else in regard to this case except Mr. Moore. I went to his office last Saturday and told him I had received instructions from Mr. Mills that the tubs were to be loaded evenly. I believe that is the first time that I ever talked to any living human being about those instructions. I don't remember whether or not I told Mr. Moore the time when I received those instructions from Mr. Mills. I remember distinctly that Mr. Mills told me not to have trouble with the customs weighers and I never did have any with them that I know of. [1165—1106] If things are going lively they will weigh tubs about once in an hour or once in three-quarters of an hour on my barge. I call 75, 80 or 90 tubs an hour lively hoisting on the "Theobald." We sometimes, but very seldom, go over a hundred. I work upon all the barges. A round of tubs is taken about once in fifteen or four in sixty tubs. Sometimes while the tub is coming down the customs weigher will tell me



(Testimony of Frank Wilson.)

to put the next tub on the scales. I tell the engineer. I sing out to him to put them on the scales. On one large barge, the "Theobold," I have to call two men up from the hold to give a hand in helping to put the tub on the scales. On the other barges, also, where they have platform scales, they have to call up one man for this purpose. When the wing man or the center men are coming up from the hold, the rest of the shovelers are sometimes filling up the tubs; on other occasions the tubs happen to be already filled. The tubs that are to be weighed are not at all times already filled. They may be either filled or getting filled. If they take them when they are in the hatch they are filled.

I do not take account of nor know how much coal is put on the barges that I have charge of. I never take a record of the intake of the barge; nor do I ever take note of all the coal that is taken into the barge and loaded into the ship. I have no knowledge at all of the difference between the intake of the barges and the outgo of the barges. Mr. Mills never told me, after giving me the instruction above referred to, that the tubs were not kept evenly filled, nor that the barges turned out more coal practically all the time than they took aboard. He never complained to me about overages on the barges, nor about shortages. He never came to me and said: "Here is a case where there is an excess of 40 per cent in the amount of coal discharged [1166—1107] from the barge over the amount that went into the barge." Nor did he ever say, "Here is a case where

(Testimony of Frank Wilson.)

200 tons is left in this barge more than went into it.” No complaints of any kind were made by him to me concerning any overages or concerning any shortages.

Redirect Examination by Mr. MOORE.

When I said that sometimes when weights were to be taken the tubs were all in the hatch, I meant that the four tubs were then full and ready to be dumped into the bunker of the ship. At other times, of course, the tubs might be at the piles of coal getting filled.

I know Tony Bellish. He worked for me quite a while. He was a very good man. He would keep his tub filled at any stage of the game, no matter where the tub was—whether at the lump coal or the fine coal, because he was a very good coal shoveler.

I never winked at the men down in the hold of the barge when a round of tubs was to be taken. If the coal was right in the middle of the hatch the men would be about twenty-five feet away from me. If they were working at the end of the pile they might be a couple of hundred feet away. They have their backs turned to me anyhow as they fill the tubs.

In the winter-time, or after rains, the coal is pretty wet. The men's feet get wet from working in it. In the summer-time the boatswain of the steamer, while washing the deck down, is accustomed to play the hose on the coal in order to lay the dust so as to avoid dirtying the steamer. He uses a five-inch hose. The foreman of the bunkers of the steamer also puts water on the coal in the summer-time so that the dust will not choke [1167—1108] the men who are

(Testimony of Frank Wilson.)

working in the bunkers. The water is put on the coal while it is still in the barge because if the coal is dry and dusty and goes into the bunkers that way there is no chance for the dust to escape. On the big steamers where the chutes into the bunkers are high the coal may drop 60 or 70 feet into the bunkers, but in most cases the drop is not so far. This matter of wetting the coal down during the summer months is of frequent occurrence. The trimmers would refuse to work if the coal were not wetted down. The trimmers are the men who stow the coal in the bunkers of the vessel.

Recross-examination by Mr. SULLIVAN.

Tony Bellish was a very good shoveler and always carried out instructions and was honest, faithful and obedient to orders. The water was discharged on the coal in the summer-time between six and seven o'clock in the morning when they were washing the decks down. The custom-house weigher would be present at the time. I have seen him there on such occasions. They play the water on the coal maybe fifteen or twenty minutes at a time. It would be a five-inch hose. I believe the water is pumped from the bay. The coal is also wetted down in winter-time if it happens to be dusty. They are not putting water on the coal now because rain is so plentiful. I have myself at times been in the bunkers of the ships. The men do not play the water on the coal after it has got in the bunkers. That is always done on the barge. I would protest to the Pacific Mail Steamship Company playing the hose on the coal if they kept it up

(Testimony of Frank Wilson.)

too long, for the simple reason that the water would run through the coal and come out on the skin of the barge and then the men would get their feet wet. The tubs are not water-tight. [1168—1109]

Redirect Examination by Mr. MOORE.

I did not ever give Tony Bellish the wink while he was working under me.

**[Testimony of Andrew Rocca, for the Defendants.]**

ANDREW ROCCA, a witness called for the defendants and sworn, testified as follows:

Direct Examination by Mr. STANLEY MOORE.

I live at 548 Third Street and work for the Western Fuel Company as hatch-tender, and have so worked about two and a half or three years. Before that I was a coal shoveler for about five years with the same company. Before that I worked as fireman for five or six years on the steamers of the Oceanic Steamship Company. I know Ed. Powers and David Powers and have worked under them while I was coal shoveler and they were hatch-tenders. They gave me instructions to keep the tubs even as much as I could. Ed. Powers told me that; also, Dave Powers. Neither of those Powers brothers ever told me at any time to overload the buckets that would be weighed and to under-load the buckets that were not to be weighed. Nor do I remember either of them ever telling me at any time to go into the fine coal when weights were to be taken and at times when weights were not to be taken to load the buckets with lump coal. I also worked under other

(Testimony of Andrew Rocca.)

Hatch-tenders of the Western Fuel Company, namely, Fred Beale, Dan Pallas and Frank Wilson. They gave about the same instructions as the Power boys to the stevedores, namely, to keep the buckets even full. As hatch-tender myself for about two and a half or three years, I have told the shovelers the same thing, and, while I have been hatch-tender, the buckets always have been kept evenly full. [1169—1110]

Cross-examination by Mr. SULLIVAN.

I am now and have been for a good many years employed by the Western Fuel Company and get good wages. Whether the barge I have charge of frequently turns out more coal than it receives, I do not know. I know nothing about that. I never heard anything about it. I have never heard that my barge turned out 100 tons more coal than went into it. I have never heard any complaints on that score. Nor have I ever heard that my barge turned out less coal than went into it. I have not received complaints upon that score either. Mr. Mills seldom talked to me. He never has given me any instructions. Nobody else ever told me that the barge I had charge of was turning out more coal than went into it. Eddie Powers was hatch-tender in 1906 or 1907. I was with him four or five months. It was while I was working for him that he gave me instructions to load the tubs even whether they were weighed or not weighed. He gave me those instructions just a few times. It is a fact that the instructions were given when the custom-house weigher was right there looking on. It is not a fact that he ever told me, "Here



(Testimony of Andrew Rocca.)

comes a certain custom weigher; he is an honest man; look out for him; load your tubs even." He never told me such a thing as that. He did give me instructions to keep the tubs even when I was working there. I didn't leave any time to look if the custom-house officer was close or not, as well as when they were present. When Eddie Powers gave me those instructions, I was keeping my tubs even. I was coal shoveler at the time and had been for a long time theretofore. I was under Fred Beale and Dan Pallas before Eddie Powers became my hatch-tender. Those men also gave me instructions a few times to keep the tubs even. It is not a fact that the instructions were given when a custom-house officer was complaining. I never heard a custom-house officer complain about the tubs not being evenly loaded. When I was hatch-tender the custom-house weigher sometimes made a complaint about [1170—1111] the tubs coming up full with a little cone on top, in which case, he would order the tub to go up without being weighed. When a tub is to be weighed I as hatch-tender, always see that it is just even and filled to the top even. When I was a coal shoveler I always loaded the tubs that were weighed full, even with the top, and I always saw that they were so loaded when I was hatch-tender. I never saw a tub of coal weighed where the coal came above the top and made a sort of cone thereon. Tubs if filled above the top would not be weighed by the custom-house officer who would not stand for an overfilled tub. That is the reason the tubs were not overfilled, and

(Testimony of Andrew Rocca.)

the further reason is that it is not right to weigh tubs like that. I have heard the custom-house officer say, "Here, you shall not weigh that tub because the tub is more than full; the coal is heaping up above the top of the tub." I heard him say that just a few times, both when I was shoveler and when I was hatch-tender. In such cases the tub would be sent right up without being weighed.

Redirect Examination by Mr. MOORE.

Whether the four tubs are already full and waiting when the custom-house officer calls for a round of weights depends on the way in which the work goes. If it goes slow the four tubs are ready in the hatches. If it goes fast the men can't get the four tubs in the hatches and the most that goes up is two. I do not know when the custom-house officer is going to call for weights. I never winked at any men down in the hold of the barge to indicate to them that the custom-house officer was going to call for a weight. A man working down there works too hard to look for winks. [1171—1112]

Recross-examination by Mr. SULLIVAN.

I have never told Mr. Smith, or Mr. Mills, or Mr. Howard, or Mr. Moore, or anybody else that the tubs that were weighed were filled in the same way as the tubs that were not weighed.

**[Testimony of A. J. Schultz, for Defendants.]**

A. J. SCHULTZ, a witness called for the defendants and sworn, testified as follows:

Direct Examination by Mr. KNIGHT.

I have for eight years been stevedore for the Western Fuel Company. I am foreman of the stevedores. Prior to that time I was for eleven years stevedore for the Southern Pacific Company unloading coal from vessels at Port Costa and Oakland Long Wharf, but not on this side. As foreman of stevedores for the Western Fuel Company I have had charge of unloading coal steamers and loading barges and store-ships. The performance of my duties takes me all around the plant of the Western Fuel Company. I have unloaded coal for them at Folsom Street, Little Howard Street, Vallejo Street and Green Street. We had top scales at Green Street, Folsom Street and a part of the time at Vallejo Street and at Mission Street. We ceased using Mission Street I think two years ago. Where there are no top scales we had to land our tubs on platform scales to suit the weighers. The tubs were hoisted and then, after that, weighed on top of the bunker. One tub in fifteen would be weighed by the United States Custom-house Weigher. To my knowledge there was no difference made in filling tubs that were to be and were not to be weighed, respectively. My orders to the men under me were that all the tubs were to be filled even regardless of whether they were or were not to be weighed. I would then go around, and, so far as I

(Testimony of A. J. Schultz.)

could observe, the instructions [1172—1113] were carried out. At Mission Street and Folsom Street bunkers we simply loaded our tubs and hooked them on the hooks and dumped them into the hoppers on top of the bunker. Each hopper had four outlets, of which two were commonly used. I used to warn the men whenever I saw the cars overloaded. I told them I wanted the cars so loaded that no coal would be spilled. It was inevitable, however, that some coal would be spilled nevertheless. We use movable platforms when we are discharging a ship. Such a platform is placed under a hopper which is in operation. That is done at my direction. I do not recall any instance where my directions in this regard were not carried out. If some coal happened to overflow the cars, as for instance when a chunk of coal would block the chutes leading from the hoppers, we would gather the overflow into a little pile and shovel it into the next car that came along. I had one man and sometimes two men stationed on the bunkers for this express purpose. The gates to the hoppers are operated by air pressure requiring at least 80 pounds. If a lump gets caught in the gate or chute we jump up and remove the lump as quickly as we can. My duties cover not only supervision of the unloading of steamers, but, also, supervision of the loading of barges. The method of loading a barge is this: we run our coal down to what are called the offshore pockets which are receivers holding all the way from 50 to 70 tons; then we have an endless chute or conveyor operated by electricity which we bring along

(Testimony of A. J. Schultz.)

to the particular hopper we wish to empty, and convey the coal therefrom into the barge. The chute runs along on the offshore side. It is stationed on the end and swings around on a track by the offshore bunkers, so that it can be put directly by whatever pocket we wish the pockets being numbered from 22 to 1. The engineer [1173—1114] moves with his chute, stationing himself on a little platform. When I get orders to load a barge (and such orders come directly to me from Mr. Mills), I place a barge at the pocket at which I wish to operate and give the man instructions to go there with his coal. Sometimes I receive from the man on top or from Mr. Mills himself the number of the pocket which he wishes to empty, this information being given to me verbally or perhaps on a scrap of paper. The man on top to whom I refer is Mr. Mayer. As to the contents of the barge I could guess within 50 tons of what she is taking on board by her displacement or draught, but I cannot make this guess as to more than two or three of the barges. I don't know the contents of the pockets I am unloading. If I wish to know, I would have to inquire of the weigher or Mr. Mills. Sometimes when I am told to empty a certain pocket I am given also the number of pounds in that pocket, but not always. Once the barge is loaded, I am no longer responsible for the coal that goes into her. I do not follow her any further. As to the question whether when the barges come alongside the offshore bunker to be loaded there is or is not any coal aboard, I would say it is very rarely



(Testimony of A. J. Schultz.)

that I have seen a barge cleaned out. She almost always has a little coal aboard.

The barges are discharged by buckets or tubs. We unload the steamers by a similar kind of bucket or tub. At Mission Street and Folsom Street the buckets used in unloading a steamer dump themselves automatically, and that is true, with one or two exceptions, of the barges also. I have never seen a bucket dump itself that is loaded less than up to the water line. When a bucket is so partially filled, which occurs occasionally in finishing up a vessel, it is necessary in order to get it to dump to take the coal from the back and bring it towards the mouth so as to make the latter heavy and the former light. These tubs have [1174—1115] a long lip inside. The mouth comes out at an angle of 30 degrees; the back of it is half-oval shape; then we have what is called a bail that the hook goes on to elevate the tub, which bail is fastened on the side with two pins. From the bail there is a latch projecting to the back of the tub and going in a roller pin which holds the tub in balance. The bucket therefore discharges more easily if it is very full. There is always trouble with the discharge if the bucket is loaded below water measure. If such a partially filled tub goes up, we have to send a man up to dump it by hand and that may take five minutes, thus causing us a considerable loss of time.

Except in a couple of cases, the buckets on the barges are operated on the same principle as on the vessels I have just described. On two barges the tubs

(Testimony of A. J. Schultz.)

are dumped by hand. I have had occasion from time to time to observe the manner in which the buckets on the barges are filled. I have never noticed any difference in the contents and quantity of coal in buckets that were not weighed on one hand and in buckets that were weighed on the other. As to the capacity of the barges, the "Ruth" would carry 650 tons, the "Nanaimo" 850 to 900 tons, the "Comanche" about the same as the "Nanaimo"; the "Melrose" 1050 tons and the "Theobald" 1150 tons. I can give the approximate dimensions of some of the barges: the "Nanaimo" 200 feet long by 32 or 33 feet wide; the "Comanche" 200 feet long by 36 feet to 38 feet wide; the "Wellington" about 240 feet by 38 feet, the "Theobald" something less than 200 feet by 35 feet, the "Melrose" about the same as the "Theobald." The towers on the barges are stationary. About one-third of the "Wellington" is given up to her hold. The tower is a little aft of the center. On the "Wellington" the bucket would have to travel between 70 and 80 feet in order to receive its load of coal [1175—1116] after it had reached the hold if the center of the barge had been cleaned out. Sometimes coal lies a considerable time in these barges. It all depends on our business. If we are not rushed a barge may lay there loaded with coal for a month. Some barges are used more frequently than others because they are handier to operate. Other barges are used as store-ships. Oh, yes, I have known of accidents occurring to men in the hold from coal falling down from out of overcrowded buckets. In such

(Testimony of A. J. Schultz.)

cases I have personally told the men in the hold to fill the buckets only so full as would be safe. They would then be filled a little over the water measure. That is safe. By water measure I mean a line drawn from the lip right to the rim of the tub, from front to back.

Cross-examination by Mr. SULLIVAN.

I have been steadily employed eight years by the Western Fuel Company and I am satisfied with my wages. It is part of my duty as head stevedore to go to all the different parts of the plant. I superintend the discharge of vessels that bring imported coal to San Francisco. When a ship is discharging into the bunkers at Folsom Street or Green Street or Vallejo Street, as the case may be, I am part of the time aboard ship for a whole hour. When a ship is discharging I am aboard her at least once a day. At Folsom Street I would sometimes be aboard the ship an hour, and, again, I would be on the wharf and observing the unloading from that station. I am aboard for an hour and then I go ashore for ten minutes and then I go aboard again, and so on back and forth. Where we have no scale on top of the bunker we weigh the coal aboard ship. There have been bunker scales at Folsom Street, however, ever [1176—1117] since I have been employed by the company. The Mission Street bunker was dismantled, I think, two years ago, and since then the most of the imported coal has been weighed out at Folsom Street. A couple of years ago we did very little at Folsom Street. I think we stopped operat-

(Testimony of A. J. Schultz.)

ing the bunkers there for a whole year. That was 1911. I could not say that most of the coal was unloaded at Folsom Street except for that one year, because we had coal coming also to Mission Street. When a ship is unloading at a bunker I also go onto the bunker; sometimes twice in the forenoon and sometimes twice in the afternoon. My purpose is to see that everything is going on right. There is never a day goes by when I am not on my job. I probably stay on the bunkers on such visits fifteen or twenty minutes. I go right out to the end of the bunker and back again and I look in here and there. I generally found that everything was going all right in the discharge of the ship. In addition to my duties in connection with the discharge of imported coal from vessels, I attend, as I said before, to the loading of the barges. My duties are not restricted to any one bunker; sometimes two or three bunkers are in operation, but not very often. In such cases I go from one to the other. I have nothing to do with the discharge of barges into ships.

Referring now to the tubs used in discharging a vessel of imported coal, I have not seen a tub three-quarters full discharged on one of the automatic dumpers. The tubs that I operate don't do that; they must be full. I know it is to the interest of the company to fill the tubs full at the time they are discharged from the ships into the bunkers, and I take care that they are filled, but I see to it that they are not over-filled because I do not want the coal to topple over on anybody's head. The coal [1177—1118]



(Testimony of A. J. Schultz.)

all goes into the cars from the hoppers and is conveyed to the scales where it is weighed. I have of course had experience in discharging coal from ships into vessels alongside. That belongs to my department. The tubs in such cases are loaded as even full as possible. I don't allow tubs three-quarters full to go overside. At Vallejo Street and Little Howard Street we have no top scales, and, if a ship comes in there, we have to put our scale on her deck. We fill up the bunkers at those docks whenever occasion requires it. The custom is to weigh one bucket in 15 on the ships. I have always seen them weighed that often. I am sure of it. It is optional with the custom-house weigher to weigh four buckets in sixty. I don't know how often I have seen four tubs in sixty weighed instead of one in fifteen. I have seen it once in a while though. The more frequent practice is to weigh one tub in fifteen.

I received instructions to fill all the tubs even. By that I mean that the tubs should be a little over water measure. The instructions were given me by the superintendent when I first started to work. I got those instructions the very first time I commenced to work offshore. Mr. Mills gave them to me. I remember the occasion. He was standing right alongside of me when I said to the foreman, a new man, to keep the tubs as even as possible to avoid trouble with the weigher. Mr. Mills was standing alongside and he said: "That is right; those are the instructions." The occasion was several years ago. I don't know what vessel we were then unloading;



(Testimony of A. J. Schultz.)

I do not remember the name of the foreman to whom I was talking. There was a weigher on the barge then as there always is. Answering the question whether Mr. Mills ever gave me instructions more than on that particular occasion, I would say that one instruction is enough for me as long as [1178—1119] I work for the company. When I was discharging coal from the pockets of the bunkers into my barges, Mr. Mayer would tell me how much coal was in the pocket if I requested him. He gave me generally on a blank card the number of the pockets. Sometimes Mr. Mills does that. Sometimes they also give me a memorandum showing the amount of coal I am to discharge; sometimes they do not. It is very seldom that I receive such a memorandum, however. We have a certain book relating to the offshore pockets showing the amount of coal in each pocket. I could see that book if I asked for it. It is kept either by Mr. Mayer upstairs or in the office. Mr. Mayer usually keeps it upstairs because he makes notes in it as he fills the pockets. I have also seen that book in the weighing office and have seen Mr. Mills take it up occasionally to look for certain pockets.

I have been on the bunkers when the cars were loaded. When we are discharging a ship I make my rounds of the bunkers and the cars are loading all the time and I am right close to them. I have very seldom seen the cars overloaded so that the coal would fall down onto the deck of the bunker. The man that operates the cars also operates the lever

(Testimony of A. J. Schultz.)

that opens the chute discharging the hopper into the cars. That is the motorman. They use movable planks on the bunkers. There is a certain hole between the tracks and we make the platforms to cover that hole. The platforms are from ten to twelve feet long and  $2\frac{1}{2}$  to  $3\frac{1}{2}$  feet wide. The platforms are very easily removed by two men. We have some spare platforms that are sometimes alongside of the bunker. The regular platform is always down. I have seen the spare platform lying alongside the bunker while the coal was being discharged from the ship into the bunkers. We have three or four such spare platforms. When the cars are being loaded the platforms are always [1179—1120] down. I have never seen the space open and the platforms away at a time when a ship was discharging into the hoppers or the hoppers were discharging into the cars.

There is practically always some coal in the barges. I guess it is only three or four times that I have seen a barge scraped out. I have nothing to do with that myself, however, but I have occasion to observe every time a barge comes to be loaded that she has coal in her, with the exception of the three or four times I have referred to. Sometimes they have half or three-quarters of a load. I go aboard a barge whenever she comes for a load, and, when she is pretty nearly loaded, I also go aboard to size her up. I don't go aboard until she actually gets alongside the bunker. I never go aboard a barge when she is at the Pacific Mail Dock discharging into a steamer.

(Testimony of A. J. Schultz.)

Such knowledge as I have of the manner in which the cargo is discharged into the Pacific Mail Company's ships is derived from my incidental observation and not in the course of my duties on the barges. I make such observations from the dock or from a steamer alongside the barge.

The full capacity of the "Nanaimo" is from 850 to 900 tons. She would not sink if a couple of hundred tons more were placed aboard because the load I have given is her regular load. She can carry more, but we do not wish to overload her on account of stress of weather. Years ago I have put as much as 1050 tons on the "Nanaimo." My orders are, however, to load her now to her winter capacity, that is, 850 tons. In summer she can carry, as I have said, from 200 to 250 tons more. When summer comes on I sometimes get orders from the superintendent to load her down to her summer mark. The capacity of the "Ruth" is 650 tons. She is an old barge and it would be dangerous to give her more. I think 735 tons is the most I have ever placed aboard her. We do not distinguish between summer and winter loads for the "Ruth." [1180—1121] The "Comanche" has the same capacity and is treated in the same way as to summer and winter loads as the "Nanaimo." The "Melrose" can pack 1050 tons summer or winter. If we are jammed for space we may put more on board her. She used to bring 1500 tons from Seattle years ago. 1150 tons is now her normal load, but I would not be afraid to put 1400 or 1500 tons on her. I have put 1200 tons and over on

(Testimony of A. J. Schultz.)

the "Theobold," but we usually confine ourselves to 1150 tons as to her. When told to load her up I have put as much as 1250 tons aboard her. When she is loaded down to 22 feet and carrying 1250 tons, she has freeboard enough to go around the Horn if she were safe and sound, but she is an old boat now. The summer and winter loads of the "Wellington" are alike, 1600 to 1800 tons.

Since this trial commenced I have never talked with Mr. J. B. Smith nor with Mr. Mills nor with Mr. Ed. Smith about my knowledge of the fact that the tubs that were weighed and the tubs that were not weighed were always loaded even. The attorneys in this case asked me about the matter and I answered them just as plainly as I have answered you.

Redirect Examination by Mr. KNIGHT.

We have at times loaded out barges with coal from the yards across the Embarcadero. If we have a low barge on hand or barge with an apron we run the coal across in our wagons. The "Comanche" and the "Nanaimo" are low barges. We have thus run coal across the streets in wagons and onto the barges at times when we had no steamer alongside the bunker or did not have on the dock itself the kind of coal that we wished to put in the barge. I do not know whether the coal that is hauled across the street and thus dumped into low barges is weighed or not. Occasionally the coal [1181—1122] from the yard which is hoisted and run across the tramway to the offshore pockets is weighed, and, again, occasionally, it goes right down to the barge without being



(Testimony of A. J. Schultz.)

weighed; but, in the latter case, they keep tally on each trainload. Thus when there is no weigher present the only way we have of keeping track of the quantity of coal thus removed from the yards is by the number of carloads dumped into the pockets and afterwards into the barge.

When we are unloading a steamer of imported coal, I have in the hold of the steamer a crew consisting of the foreman and eight men below, the foreman on deck and the engineer on the bunker. That is the arrangement for each hatch. If we have the the room, we operate four buckets to each hatch. Some of the steamers contain three hatches instead of four and some of them have as many as six. As near as I know, a shovelful of coal weighs 20 pounds. We usually put screenings in with the lump coal in the offshore pockets so as to make an average. There is a screening bin on the lower end of the bunker and we have a belt running from a given point there to which our trains go to get the screenings so as to convey them to the offshore pockets. I have many a time seen cars crossing over the switch with screenings and I don't know whether they had been weighed or not. It is not necessary to run the cars containing the screenings over the scales if the man gets orders not to. By means of a switch there and two uprights we are thus able to operate the screenings cars without interfering with the regular process of weighing the other cars. In other words, we can get to the offshore bunker by means of that switch without going near the scales



(Testimony of A. J. Schultz.)

with our screenings cars. We can only open this switch by taking out a 10 by 10 beam which supports a hopper. This beam can be [1182—1123] removed whenever we are not using that particular hopper. When we have a ship which is long enough to necessitate the use of all the hoppers, or, when the hatches of the ship are so situated as to require the use of that particular hopper, we have to keep the beam in.

Custom-house officers come up and down frequently and aboard the ship when she is being unloaded of imported coal.

Recross-examination by Mr. SULLIVAN.

The "Melrose," "Theobald" and "Wellington" are high barges, while the "Nanaimo" and "Comanche" are low barges. The latter, as I have said, are sometimes loaded with coal hauled to them in wagons from the yard. The high barges cannot take coal from the wagons except by an apparatus with which they are equipped. We have not discharged any coal from wagons into barges this month. I really don't know how often we did so last year. Whenever we had no coal on hand at the bunkers, but had some in the yard, we used it. We did so last year. We had three or 4000 tons of coal in the yard that year and we must therefore have loaded five or six barges that I know of. I don't know how often I saw wagons going across with these loads. It is not a rare occurrence. One winter we had lots of coal loaded by means of a boom from the yards into the high barges. We have often loaded the high

(Testimony of A. J. Schultz.)

barges that way. The wagons are regular coal carts with an estimated tonnage of a ton or over. I couldn't say whether the coal was weighed before it went into the barge, because I don't handle those teams. Nobody told me the quantity of coal in the wagon when the wagon came to the barge; nor did I make a memorandum thereof. I don't bother my head about the quantity of coal that comes in that way by the wagons. [1183—1124] I don't keep a memorandum of the quantity of coal that goes into the barge. Our office people attend to that. If the coal comes over in a tub and is weighed in while we are discharging, Eddie Mayer is the man who keeps track of the quantity. In answer to the question who keeps a record of the tonnage of coal that goes into a barge by way of wagons, I would say Mr. Miller handles the teams. The screenings are kept on the north side of the bunker in a bin and on the inshore side. There is no way of loading the screenings from the bin into the vessels alongside the bin. The screenings have to be first put in cars. They go into the cars by an endless belt. In answer to the question whether I have ever been on the bunker when coal was being dumped into the bunker and no customs officer present, I would say we never operate the ship unless there is a weigher there. It does, however, occur that we bring coal from the yard without having a weigher present. In such cases I am instructed to go ahead and keep tally of the trains that come down and I tell the motorman in turn to keep that tally. That would occur when we had no

(Testimony of A. J. Schultz.)

coal on the bunkers. It occurred half a dozen times last year. I don't know how often the year before. I cannot answer your question as to how often that has occurred in all in the last eight years, but I do know that we have several times had the yard full of coal and that we hoisted it out of the yard and dumped it into the offshore pockets and barges.

It is a fact that when a ship is discharging imported coal a record is kept of every carload that is taken off said ship and dumped into the offshore bunker. It is all weighed.

**[Testimony of W. R. Olinder, for the Defendants.]**

W. R. OLINDER, a witness called for the defendants and sworn, testified as follows: [1184—1125]

Direct Examination by Mr. STANLEY MOORE.

I am now and have been for the two years last past residing in Berkeley. Formerly I resided in Alameda, and before that in San Francisco. I have been following the blacksmithing trade for 45 years. I am now and have been in the employ of the Western Fuel Company since the organization of said company. I am blacksmith and machinist. I am responsible for fixing anything that goes wrong in the entire plant, including the bunkers, yard, conveyors, belt, motors and hoists. I used to work for the Rosenfeld Company. I and my helper, Mr. Ewing, make the links that couple up the cars that are operated on top of the company's bunkers. I make most of them. Formerly the company had two bunkers, one at Folsom Street and the other at Mission Street. Whenever I start in making links

(Testimony of W. R. Olinder.)

I make half a dozen so as to keep them on hand. I make them perhaps two or three times a year. I remember an occasion when a custom-house officer complained to me that there was something the matter with a coupling up of the cars. That was five or six years ago at Mission Street. The cars stopped running and they sent for me to come down and see what was the matter with the scales. I could find nothing the matter with them. I told them they had better get someone from Fairbanks-Morse to examine the scales. Fairbanks-Morse sent a man out. There is an angle-iron about  $2\frac{1}{2}$  inches by one-half that holds the drawhead that hooks the two cars together. The link was all right, but the angle-iron had come in contact with something and had got bent or twisted and I saw that I could not put the link back again, so I made three new links out of an old chain, so that they would have free play to get clear. After that they were all right. It was in the middle section of the train that the drawhead was bent. They continued to operate those particular cars with the three links I had put in [1185—1126] until I had time to throw that car out. I don't know when that was, but I made the repair on the car and put a new angle-iron in there and paid no more attention to it. The chain was used for quite a while. In response to the question whether by reason of the twisting of the drawhead there would be any tension caused while any of the cars were on the scales, I would say yes, that when I saw the drawhead was down I could not put the link back again, and, in order to get it



(Testimony of W. R. Olinder.)

free, I had to make the chain quick so that is why I got the three links that did the trick. As to the comparative sizes of the drawheads used at Mission Street and Folsom Street, respectively, I would say that those used at the latter bunkers would make four or five of those used at the former. The Mission Street cars were very frail cars, while at Folsom Street the cars were heavy. Sometimes the cars run off the tracks on the bunkers four or five times in a day, sometimes two or three times in an hour. They run the cars pretty lively and pretty carelessly. The cars don't get clear off the track; they get lopsided so that half of the car goes off and all out of shape. Those accidents will not happen every day and there may be a period of a month without such an accident, and then there may be three or four such mishaps in a day. The cars have gone off the tracks many times the last year. Inside the last month three or four cars went off. As to the effect on those light drawheads at Mission Street of such a mishap, I would say it depends on how the cars went over. If one car is on the track and the other half off, it gives a kind of a twist; the rail sits on a 12 by 12 and there is nothing on the bottom, and when the car gets off there is nothing to hold it up, so that the car is left hanging in the air by the drawhead. I should judge the links I made for the Mission Street cars were 9 to 10 inches [1186—1127] long by five-eighths. They were made of Norway iron, because that iron stands more resistance and would bend quicker. If the links were made out of poor iron



(Testimony of W. R. Olinder.)

they would break. The links at Folsom Street, I make out of  $\frac{7}{8}$  iron about 12 to 15 inches long. If I find a cross-head that is a little up or down, I put an offset in it to meet the other cross-head. By cross-head, I mean the drawhead of the car. I want to give plenty of room by this offset so as to avoid any trouble on the scales and so everything would run free. I have never at any time since I have been working for the Western Fuel Company made a single link that was intended to give that company the best of it in weighing on the scales.

Cross-examination by Mr. SULLIVAN.

It was five or six years ago that I found the defective link to which I have testified. I can't give the exact date and I can't even swear as to whether it was before the earthquake and fire of 1906. The incident occurred on the Mission Street bunkers. I am perfectly sure it was not at Folsom Street. There was nothing the matter with the link. Everything I made there was perfect. The trouble was with the drawhead which was bent, or, rather, it was the angle-iron that holds the drawhead. It was kind of twisted. I do not know how long it had been in that condition. A custom-house officer had made complaint about the weighing on the day I was called up. He did not say the trouble was with the angle-iron; he simply said there was something wrong with the scales; he didn't know exactly what. I did not notice that the scales did not weigh correctly. I simply took his word for it. I don't know anything about the scales except what they told me, which was

(Testimony of W. R. Olinder.)

that the scales were out of order. Whether the correct weight could be taken or not, I [1187—1128] don't know. The custom-house officer present, I think, was Mr. Murray.

Q. Do you remember any occasion when there was some complaint made about defective weighing on the Folsom Street bunker by reason of some defect in the link? A. In the link?

Q. Yes. A. That the scale hangs on?

Q. No, a link which connects the second and the third car? A. I don't know anything about that.

Mr. STANLEY MOORE.—I think, Mr. Sullivan, your testimony shows that it is the Mission Street bunker. I think there is no question about that.

Mr. SULLIVAN.—No, both Mr. Freund and Mr. Delaney said that on one occasion there was a defective link on the Folsom Street bunker.

Mr. STANLEY MOORE.—Powers says it was the Mission Street bunker and he said that Murray and Freund were present.

Mr. SULLIVAN.—Mr. Freund has testified to the occasion and he says the defective link was observed by him on the Folsom Street bunker.

Mr. STANLEY MOORE.—Well, there is a contradiction, Mr. Sullivan. Delaney said there was trouble with the scales; he is referring to the "Dumbarden"—"Germanicus" incident when the scales were out of order. Mr. Powers says that the bent link happened on the Mission Street bunker and the weighers present were Mr. Murray and Mr. Freund.

Mr. SULLIVAN.—I know what Mr. Powers says.

(Testimony of W. R. Olinder.)

The only occasion I can remember of when I was called upon to make repairs by reason of an angle-iron being twisted and interfering [1188—1129] with the link connecting the cars of the trains was at Mission Street and is the incident to which I have testified. I never remember adjusting a defective link or drawhead at Folsom Street bunkers.

Q. Do you remember on any occasion going to the Folsom Street bunker when Mr. Smith was present and Mr. Mills was present, and also Mr. Wooster, when some trouble was caused by a link which connected with second and third car of a coal train of cars? A. At Folsom Street?

Q. Yes. A. No.

Mr. McCUTCHEN.—You are surely mistaken about that.

Mr. SULLIVAN.—No, I am not. I refer you to Vol. 22, transcript page 2531 of Mr. Freund's testimony. He testified it was at the Folsom Street dock.

Mr. MOORE.—He was mistaken.

Mr. SULLIVAN.—I don't think he was mistaken, and he refers to the fact that at that time he rang up Mills, telling him that there was something the matter with the cars, and Mills came up afterwards.

Mr. MOORE.—We will show that that was at Mission Street and not Folsom Street.

So far as I remember, all the cars on the Mission Street bunkers were of the same pattern. There were two kinds of cars, however, on the Folsom Street bunkers. The coupling parts of the cars do not come on a level. There are straight links, however,

(Testimony of W. R. Olinder.)

on pretty nearly all the cars on the Folsom Street bunker. The effect of having an offset in a link is not to cause one car to weigh against another, but to make the connection run clear. You [1189—1130] can move it with your hand. That is the only reason. I cannot say how many offset links I have made for the Western Fuel Company. I guess I have made half a dozen. The majority, however, are straight links. Both ends of an offset link run parallel to one another, but one end is higher than the other. There is a bend in the center of the link. The difference in height between one end of the link and the other end of the link is probably an inch or inch and a half.

Redirect Examination by Mr. MOORE.

Some of the cars, especially the cars on the Mission Street bunkers, are of different size and different type of drawhead.

Recross-examination by Mr. SULLIVAN.

I remember that on the occasion when I was called to Mission Street to look after the bent angle-iron when Mr. Murray, the custom weigher was there, but I can't be sure whether Mr. Wooster or Mr. James B. Smith or Mr. Mills were present. I was a little excited when I went up there. I could not be positive as to them.

A. I could not say whether Mr. Wooster was there at that time. I saw Jim Smith up there frequently but not at that time exactly. I won't say I saw him there on that occasion. I believe I did see Mr. Mills there but I won't be positive. I was excited there.

Q. You were excited?      A. You bet I was.

(Testimony of W. R. Olinder.)

Q. What made you excited?

A. Well, I will tell you, if anything goes wrong, I want to get in and I want to see what the trouble is in the stopping, holding the ship up.

Q. Was Billy Miller there on that occasion?

A. Oh, no, I never saw Billy Miller up there; I was pretty excited.

Q. Do you always get excited when that happens?

A. I get a move on. [1190—1131]

Q. You testified sometimes 4 or 5 times a day there is trouble on the bunkers?

A. Four or five times—not 4 or 5 times; 2 or 3 times a day.

Q. Two or three times a day?

A. Sometimes, not always.

Q. You get excited every time, do you?

A. I mean, to get the ship done in a hurry, and get it out, that is what they pay me, to keep me moving.

Q. That has been your experience for the last eight years?

A. Probably 12; I think I have been there 12 years.

Q. You get excited every time you go there to fix these cars? A. I get a move on.

Q. You have to get excited to get a move on?

A. Not necessarily, but I get a little more steam on, that is all.

Redirect Examination by Mr. MOORE.

On the occasion when I was called up there to Mission Street on account of that bent angle-iron the



ship was knocked off, they couldn't discharge anything more until they got things right.

**[Testimony of Frank Wilson, for Defendants  
(Recalled—Further Cross Examination).]**

FRANK WILSON, a witness for the defendants, being recalled, testified as follows:

Further Cross-examination by Mr. SULLIVAN.

I believe that Mr. Edward Powers once discharged me while I was under him in the employ of the Western Fuel Company. It was not because I was not turning out a sufficient quantity of coal; nor was it because I wasn't capable of handling the men under me. It was because it was raining too hard and the men wouldn't work and he said he would have another gang in the morning and another boss. The men would not work because it was raining too hard. I think I was thus discharged in 1908 or 1909. It was in the [1191—1132] winter-time. Edward Powers also discharged me, I think, a second time. It was just after the car strike, I think in the summer-time of 1907. During the car strike the men came to work at eight o'clock; after the strike they were supposed to come to work at seven o'clock and they didn't want to, and they were all discharged. I think, however, we all went back to work the next day. I remember speaking for a few minutes to Edward Powers in March or April last in front of his father's house in this city. I do not remember his saying to me, "I wonder if they are going to bring me into it," referring to the Western Fuel Company and Mr. Howard and the co-defendants in

(Testimony of Frank Wilson.)

this case. I don't think the Western Fuel case was mentioned between us. I simply asked him what he was doing and he said he was going to help paint his father's house. We did not talk about the criminal side of the case or about the case at all. I do not believe Edward Powers said to me, "I don't want anything to do with it. I don't care whether they hang or give them a medal." The Western Fuel case was not brought up. I am pretty sure he did not say that to me. I don't remember it, nor did Edward Powers say to me, "You know what was done down there," referring to the manner in which coal was weighed.

Q. Did you in that conversation say to him, "What can I do? Anyway, what can I do? The beach owes me a living," referring to the waterfront owing you a living?

A. No, he never said anything like that.

Q. Did you say to him in words or in substance during that conversation, "What can I do? The beach owes me a living."

A. No, I never said anything of the kind.

Q. You never said anything of the kind?

A. No.

Q. In that conversation, when talking about this case, did Mr. [1192—1133] Edwin Powers say to you, "If you are called as a witness, all you can do is tell the truth"?

A. No, I never said anything of the kind.

Q. Did he say that to you? A. No.

Q. Did he say that in substance or in effect to you?

(Testimony of Frank Wilson.)

A. No.

**[Testimony of Wesley Ewing, for Defendants.]**

WESLEY EWING, a witness called for the defendants and sworn, testified as follows:

Direct Examination by Mr. STANLEY MOORE.

I reside in Ingleside district. I have been in the employ of the Western Fuel Company as blacksmith's helper and general extra bunker man since 1906. I am under Mr. W. R. Olinder. As blacksmith's helper I have assisted in making the links that are used in coupling cars, and have sometimes made them myself. Said links are made as a rule of Norway iron because that iron will stand more wear and tear. I so make the links as to give plenty of freedom and easy fit and motion. On the Folsom Street bunkers all of the drawheads are of practically the same height. At Mission Street, of the four cars two were of the same height and the other two were lower. I should judge that Mr. Olinder and I made two or three links three or four times a year. I have never made any link or assisted in the making of any link that was designed or intended to give the Western Fuel Company the best of it in the weighing of coal. We always endeavor to make the links so that they will work free and easy and without binding and so that they will not interfere with the handling of the train.

In my capacity as an extra bunker-man, I do anything from running a locomotive to dumping cars, shoveling coal, trimming and running the offshore conveyors. It has been very common for me

(Testimony of Wesley Ewing.)

[1193—1134] to run cars on top of the bunkers from the inshore coal offshore, but in the last few years I have seldom run the cars in connection with the discharge of ships. Prior to the last few years, however, I used to run cars in connection with the discharge of almost every ship at Mission Street, and, indeed, until the last few years I did considerable of that at Folsom Street as well.

I remember that there are a couple of large beams upon which the scales-house rests at the Folsom Street bunkers. (The attention of the witness was here directed to a photograph.) I see in this photograph what I term a sill for the scales-house which consists of two large beams. The further beam runs clear across the track on which the cars approach the scales. It runs overhead and is over the scale platform itself; in fact, is right over the scales. Any coal that would be brushed off of a car, as the result of a car being overloaded, would fall upon the scale platform. The portion of the bunkers that reaches out toward the center of the Bay from the scales is planked solid clear down to where No. 1 tower sets, and if a car were overloaded the coal dropping down from the car would be bound to fall either on said planking or on the scales themselves. It would be impossible for such coal to fall into the bunkers below. The orders given to me and to other men in my presence and hearing were never to overload the cars. We were told to load them moderately and to keep the traffic moving, for if one train is stopped and the other blocked, then neither of them can move and the

(Testimony of Wesley Ewing.)

discharge of the ship is interrupted. When a ship is unloaded with four hatches going, four hoppers or towers are also busy. Two trains of four cars each are needed to take care of those hoppers. Those trains are both standing on the one track on the off-shore or south side of the bunker toward the Pacific Mail Dock." [1194—1135]

The chutes leading from the hoppers are sometimes blocked by large lumps of coal. When coal falls over the side of the car it is shoveled back, either into the same train or into the next train that comes along. The trains run by a shoe connecting with a third rail, and, if coal is allowed to accumulate upon the tracks, the shoe is liable to be interfered with and the train derailed. That happens quite often. A single lump of coal weighing 20 or 25 pounds frequently interferes with the running of the car. The ships that come in to discharge imported coal have various numbers of hatches, or, at any rate, do not always have the same number of hatches working. One hopper must be stationed opposite each hatch. When the hoppers are thus moved from place to place to correspond to the hatches we pick up the movable platforms and put them in the new positions of the hoppers. That has always been the custom on the bunkers during my employment there. When ships commence to discharge imported coal, the custom-house weigher is always there to see that everything is in place before the discharge begins. To do that he either goes under the towers or along the inshore track. When I refer to a custom-house



(Testimony of Wesley Ewing.)

weigher or inspector I mean the general weigher and the man over him. Coal falling over the sides of cars is piled up and shoveled back into them. There are always one or two men stationed on the bunkers for that very purpose and anybody else there who is not busy assists. That job is usually handed to a new man. He is told to go up and clean out under the hoppers. I have always heard the man or men assigned to that job instructed to clean up the coal and throw it into the cars. I have never heard any orders given to shovel such coal down into the bunkers, or any orders to that effect. Anybody would know it was not right to throw that coal into the bunkers. I have personally, myself, helped to throw the coal back into the [1195—1136] cars, and I have seen Eddie Mayer do that also. If the chute from the hopper gets blocked by lumps of coal, the cars get an overload. If they are so overloaded that the coal spills over, the track is blocked and the operations are, of course, delayed. I have seen Mr. Mayer hold up cars that came to the scale-house so overloaded that the coal would be likely to come in contact with the beam. He would hold the car back until the man leveled the car off so that the coal would not touch the beam. Mr. Mayer always said to be more careful and not overload the cars. I have never heard any instructions given to anybody, and I have never received instructions myself, to dump a car of coal into the bunkers if the chance were presented. If you dumped a loaded train down into the bunker, you could hear it all over the bunker and

(Testimony of Wesley Ewing.)

most anywhere around in the vicinity. If a car were so dumped, the orderly movement of the train to the scales would be interfered with. The trains are run in the routine of a merry-go-round, one following the other. The weigher thus becomes accustomed to seeing the trains and each man on his train, and, if a certain train dropped out, it would be missed. I have many times, when a wreck, for instance, occurred, seen Eddie Mayer and the custom-house weigher come out to see what was the matter.

Cross-examination by Mr. SULLIVAN.

The blacksmith-shop where I am employed as helper is in the rear of the Folsom Street bunker-yard, about 25 feet from the yard bunkers and a very short block from the Folsom Street bunker. I go to work at 7 o'clock, but I am on the bunker generally at six. I am in the shop about 10 per cent of the time. The rest of the day I am on top of the bunker where I oil the gear, do the repairing and assist generally. I am all over the bunker, wherever my [1196—1137] duty requires. In answer to the question when I last operated a train upon the Folsom Street bunker, I would say I ran screenings a couple of weeks ago. I got the screenings from the inshore bunkers. It is not a fact that the screenings are let out of the screening-bin into cars on the wharf below. The screenings that are in the bin come up from below with a conveyor belt. The cars are loaded with screenings by an automotic electric starter. As the cars are loaded they are dumped into barges below. The cars are taken around the

(Testimony of Wesley Ewing.)

offshore track and their contents dumped into the offshore pockets. We don't generally weigh the cars containing these screenings, but simply keep a tally on them by chalk marks on the cars. I don't believe I weighed those screenings that I hauled a couple of weeks ago. Whether I made a memorandum of the weight of the screenings, I could not say. I took loads and loads of screenings without ever weighing them. I generally put a good heavy load of screenings into a car. I could not say positively as to what the weight of such a carload of screenings would be. I don't make a memorandum showing their weight. I simply keep track of the number of loads. This number I give to the weigher, Mr. Mayer or whoever happens to be tallying. I was on the bunkers yesterday. In answer to the question how many cars I have operated within the last two years, I would say I haul all the screenings for pretty nearly every ship. I carry such screenings to the offshore pockets. That is where they are generally carried unless there is a special order to dump them into the in-pocket.

In answer to the question how often I made any coupling links during the last year, I would say I made one myself about a month ago and helped to make three or four. Those were straight links. I always make straight links. I know what a setoff is. I cannot [1197—1138] remember that I ever made a link with a setoff. I do not remember that I have ever seen one made. I am familiar with all links that are used and have been used by the Western Fuel Company for years. The effect of a link

(Testimony of Wesley Ewing.)

with a setoff in it would not be to create a false weight upon the scales. The effect would simply be to make it ride easy with a low car. The length of the cars inside is about six feet five inches. I don't know their width. I should say that the edge of the car extends 14 to 16 inches beyond the rail on each side. If the sides of the cars were open, however, the coal would most assuredly fall upon the track in a heap or pile. The openings under the cars are always fully closed. Coal falling from the top of the car over the side would naturally block the track, even though the edge of the car is from 14 to 15 inches from the rail.

When the Government weigher is performing his duties he is generally looking away from the towers or hoppers. The doors of the scale-house are not always closed. The weigher when taking weights is looking at his scale-beam. I know that he is looking away from the towers, but I don't know what direction that is. His back is to the field of operations where the men are unloading the ship and cars. There is very little noise resulting from the depositing of coal into the hoppers or cars during the discharge of a ship. There is a counter-plate that breaks the drop of the coal from the tubs into the hoppers. Practically all the noise that is made is in connection with putting the coal into the cars. That is the worst noise on the job. The door of the scale-house is not always kept closed when the weigher is taking the weights, nor is it generally kept closed. Whether the windows of the scales-house that face



(Testimony of Wesley Ewing.)

the towers can be opened, I don't know. The movable platforms have always been on the floor or deck of the bunkers since I have been [1198—1139] on the job. (Here explained by counsel for the defendants that this witness has only been on the bunkers since 1906.) The planks are easily moved; two men can pick them up. I have never seen these movable platforms arranged along the side of the bunker. I have never seen the space open under the towers or hoppers, or between the towers or between the first tower and the scales-house. The platforms are always there. The space down at the end of the off-shore pockets is not covered. (The witness was here examined regarding the location of the planking and movement of the cars over the bunkers by reference to certain photographs, including United States Exhibit 159 duly introduced in evidence at this point, but the testimony is unintelligible by reading of the record because such general terms as "here," "there," "at this point where I am indicating with a pencil," etc., etc., were used in the questions and answers.

I received the instructions not to overload the cars every time I had anything to do with the train and the hauling of coal. Eddie Mayer as a rule gave me those instructions. They are given partly for the purpose of preventing the coal from falling into the bunkers below and partly to keep the trains moving. Every time, therefore, during the last eight years that I was called upon to move those cars, Mr. Mayer gave me those specific instructions. In answer to the



(Testimony of Wesley Ewing.)

question whether he gave me those instructions for the last 365 days in the year, I would say I am not there on that work every day. I am only there as an extra man; and, in answer to the question why, when Mr. Mayer last gave me those instructions, I didn't reply, "What do you tell me that for every time; I know my business." I would say I am not that kind of a man. He last gave me those instructions when I was last hauling coal. I think it was a couple of years ago I last worked as a dumper. He did not then give me instructions not to dump any [1199—1140] coal into the bunkers below. I knew by experience that that should not be done. He did, however, when I began to act as a dumper, two years ago, instruct me not to overload the cars. The extra man who was employed for that purpose generally loads the coal back into the cars when it spills over. He is continually shoveling and cleaning it up. He puts it in little piles of 100 pounds or 200 pounds, and, as a car comes along, every four or five minutes, he puts it into the car. He is continually engaged in cleaning up and scraping up the coal that falls from the cars. He thus manages to keep the platform pretty free. I have never seen the coal distributed around as appears in this photograph which you now show me. I have never seen such a condition as is depicted in Defendants' Exhibits "H," "D," or "G," nor have I ever seen conditions as bad as depicted in Defendants' Exhibit "J."

Q. Don't you know that the defendants had these photographs taken to show as good a picture as pos-

(Testimony of Wesley Ewing.)

sible, to help their cause?

Mr. STANLEY MOORE.—That is objected to as an improper question. As a matter of fact, these photographs, Mr. Sullivan, were taken long after the custom-house duty on coal was removed, and had been received for months.

Mr. SULLIVAN.—I will withdraw the question.  
[1200—1141]

I have never spoken to Mr. J. B. Smith about the facts to which I am testifying in this case, nor to Mr. Mills, nor to Mr. Mayer, nor to anybody else, except Mr. Stanley Moore in whose office I have been a couple of times. I have seen Eddie Mayer almost every day since 1906, but I very seldom speak to him, and I have never spoken to him about this case.

Redirect Examination by Mr. MOORE.

(The witness was here examined on the photographs concerning which he testified on recross-examination and on certain other photographs.)

The hopper doors are opened by compressed air which is run by electricity, which in turn is generated in the power plant of the Western Fuel Company. The electricity is turned off promptly and accurately at the noon hour. After that there is no electricity on the bunkers until a couple of minutes before one o'clock. To open the hoppers during the noon hour when the electricity was thus off, a man would have to lift a 600-pound cast-iron weight. The electricity is turned off in the afternoon at five o'clock unless they are going to work overtime.

Every time I ran one of the trains Eddie Mayer

(Testimony of Wesley Ewing.)

gave me instructions not to overload those cars. Those instructions are always given to a new man, but are repeated also to the old men.

Mr. STANLEY MOORE.—Q. In answer to Mr. Sullivan, you said that the instructions were given to you every day when you went to work, like separate instructions, and at another place you said, “Eddie Mayer told me that several times.”

A. Every time I worked on the trains. I am there daily, but I am not always [1201—1142] on the trains.

Q. Oh, every time you worked on the trains.

A. Yes, sir.

Eddie Mayer would give the instructions in a loud tone of voice so you could hear him all over the bunkers in that vicinity. At the time when he called out his orders there would be four tubs of coal coming up, the trains running and probably the screening car running too, and a general commotion going on.

I have known the scales on the bunkers to break down by reason of the overloading of the cars. I have several times seen Mr. Mayer stop a car because it was overloaded and tell the men to smooth the load down on top so it wouldn't strike the beam. Every time I have been on the trains Mr. Mayer has been hollering about the overloading of those cars. There are men coming and going on the bunkers all the time. The Government weigher has nothing to do with the screenings. The screenings are brought into the screening-bin by the conveyor belt. The

(Testimony of Wesley Ewing.)

screening belt drains off the fine coal and carries it to the screenings-bin so that it will not get into the bunkers where the dealers are supplied, because the dealers get the clean or lump coal. All of the coal, lump and screenings alike, paid the duty at the time the tariff laws were in force before said coal ever got into the bunkers at all. After that the Government has nothing to do with said coal. It is not in bond. The screenings belt taps those bunkers and takes up the screenings by the conveyor on top of the bunker again and at that time the Government weigher has nothing at all to do with the screenings, and there is, therefore, no Government weigher present when we are moving the screenings about.

(Here the witness was shown certain pictures or photographs [1202—1143] representing the discharge of imported coal from a vessel by means of tubs or buckets coming up from the hold.)

The tripper upon the bow is made out of a couple of weights bolted in. There is one tripper on each side of the boom. The weights are round cylinders weighing 80 pounds a piece and the tub comes over and hits the tripper and dumps over.

Juror BOLANDER.—Q. Does that tripper upset that bucket, or does that bucket upset itself when that catch is released, owing to the fact that it is overweighted on one side?

A. This unlatches the tripper, here, and the tub, being full, and if you will notice how the tubs are built, the mouth extends away out, the mouth being full of coal, they dump; otherwise they will not dump.

(Testimony of Wesley Ewing.)

Q. Is that bail out of center?

A. No, it is in the center, the center of the balance. When it is on the hook, it is supposed to throw over. It takes a load of coal in the mouth to throw it over.

Q. That is, its natural throw, in and of itself?

A. Its natural tendency in the mouth of the tub.

Mr. STANLEY MOORE.—This picture represents the bucket right in the act of dumping.

\* \* \* \* \*

A JUROR.—Q. If the bucket is half full, will it dump?

A. No, sir, it will not dump if it is half full.

Mr. ROCHE.—Q. Let me ask you a question. The mouth of the bucket, as you have already testified, projects forward, does it not?

A. Yes, sir.

Q. The rear of the bucket is perfectly perpendicular, is it not? [1203—1144]

A. Well, as near as a round-shaped bucket could be. She is round here. She comes out with a belly down here where this wheel is, and it runs up on about a quarter pitch.

Q. That is, a projection inward rather than outward from the rear? A. Yes, inward.

Q. There is always more coal, is there not, in the forward half of the tub than there is in the rear half?

A. No, sir, not unless it is clear full. When it is partly full, most of the coal is in the belly.

Q. I am talking about a tub that is full.

A. Oh, yes.



(Testimony of Wesley Ewing.)

Q. That is correct, is it not?      A. Yes, sir.

Q. In other words, if a partition were placed inside the tub, on what would be called the median line, or center of the tub from bottom to top, and each compartment would be completely filled with coal, there would be more coal in the forward compartment than there would be in the rear.

A. Yes, sir.

Q. There is no question about that, at all, is there?

A. No, sir, no question, at all.

Mr. STANLEY MOORE.—Q. And the center of gravity would be higher, or lower in that tub, of course, according to the extent to which it was full?

A. Yes, sir.

\*            \*            \*            \*            \*            \*            \*

A JUROR.—Q. What puts that bucket back in its original position?

A. It is heavy behind, it naturally comes back when it is empty.

Q. It naturally throws back.

A. Yes, it is heavy behind.

To Mr. ROCHE.—I could not say what is the weight of the coal that is originally contained in one of these tubs when she is evenly filled. I do not know much about the weighing. As to the [1204—1145] approximate weight of one of those tubs when evenly filled, I should say it was anywhere from 1600 to a ton, say from 1600 to 2100. That is my idea. If a partition were inserted in one of those tubs practically in the center running along the median line from the bottom of the tub to the top of the tub, I

(Testimony of Wesley Ewing.)

could not state even approximately how much more coal would be in one side than the other, nor could I saw *proporotionately*. I do not think the forward compartment would contain two-thirds of the coal in the tub, and the rear compartment one-third; I do not think that would be a fair proportion approximately. Two-fifths and three-fifths would probably be nearer but I cannot say for sure.

(The photographs on which this witness has been examined were here introduced in evidence as Defendants' Exhibits "M" to "V," inclusive.)

Recross-examination by Mr. SULLIVAN.

I do not know when the Government weighers stopped taking weights at the Folsom Street bunkers. Since then much coal has been brought to this port from Australia and dumped into the Folsom Street bunkers. I do not know whether that coal was consigned to persons other than the Western Fuel Company. I have noticed several strange men in the scales-house taking weights with Mr. Mayer since last October, and more or less up to the present time, but I do not know who they were or whom they represented.

Further Redirect Examination by Mr. MOORE.

During the discharge of a vessel, as I have said, the temporary planking is put under the towers or hoppers so as to cover the inshore bunkers. When the hoppers are very far apart, however, as in the case of a very long vessel with her hatches far apart, there are spaces between the hoppers which are not

(Testimony of Wesley Ewing.)

boarded over. Otherwise the space is entirely covered.

**[Testimony of Fred Tietjen, for Defendants.]**

FRED TIETJEN, a witness called for the defendants and sworn, testified as follows:

Direct Examination by Mr. KNIGHT.

I am a scales adjuster and for about 14 years have been connected in that capacity with Fairbanks-Morse. I have adjusted scales [1205—1146] of the Western Fuel Company on the old Chandler bunkers at Folsom Street. I have also adjusted scales at the Rosenfeld bunkers. In 1905 I visited the Folsom Street bunkers on the occasion of the unloading of the steamer "Germanicus" and the steamer "Dumbarden." They had a little trouble with the scales and I found it and adjusted them. The manager of the Fairbanks-Morse Company sent me down there and I found that the scale had sunk down on what they call the "catch-blocks" to hold the scale from falling through the wharf. The bolts were pulled through the corner and set down on blocks. The scale at Folsom Street was of the Fairbanks-Morse type. I am familiar with that type. The blue-print shown me marked "Thrust Lever Scale" is the same type of scale that was in use at that time on Folsom Street No. 2 bunker of the Western Fuel Company. The structure with the beams across the mark "elevation" is the outside frame of the scale. These corners are what the scales hang on. This is outside the wooden frame of the scale. The four stakes

(Testimony of Fred Tietjen.)

represent the platform and there are the bolts which show up on the corner section that the scales hang on. The bolts are on the four corners and are more particularly represented in the upper cut. That cut represents the holding of the scales; that is really all there is to it. The trust-levers of the scales are shown here. The scale is shown underneath the frame and marked "cross-section." The beams in that part of the plan marked "elevation" are some 12 by 14, and others 10 by 12. There is a planking across the beams covering them entirely.

Mr. ROCHE.—May I ask a question here? Q. On what does this platform rest? (Referring to the platform of the scales.)

A. This platform rests on the bearings here. This is the bearing, [1206—1147] and this stake here and this stake here.

Q. How many of those stakes are there?

A. Four. Two main stakes and two center stakes to help support the platform and take some of the strain off the largest stakes.

Q. What is the size of those stakes you have just referred to? A. 12 by 14 timbers.

Q. They support that platform, do they?

A. They support the platform with a 6 by 14.

Q. And what do those stakes rest on?

A. They rest on a 4 by 12.

Q. A 4 by 12 post.

A. No, on a bearing-plate. [1207—1147½]

Q. On what does your bearing-plate rest?

(Testimony of Fred Tietjen.)

A. It rests on what they call a shoe. We call it a bearing-foot.

Q. What is that bearing-foot? Will you describe it a little more particularly?

A. It is screwed on to the bearing-plate and it rests on what we call the knife-edge of the scales, the working part of the scales; it is a flat, and it is a grooved steel, a hardened steel.

Mr. KNIGHT.—Q. Can you show a little more particularly what that bearing-plate is? Will you illustrate or show on that blue-print, just where that bearing-plate is situated?

A. That bearing-plate is situated on each corner. One is situated here and the other there, on the four corners, and it is screwed on to a 4 by 12 planking. That bearing-foot sets on what they call a knife-edge, that is the whole workings of the scale.

Q. In the course of weighing what happens to that knife-edge which you have referred to?

A. In weighing, that is the whole workings of the scale, it puts the pressure between what they call the fulcrum of the scale and the hanging part of the knife-edge.

The knife-edge gets dull from constant use and has to be renewed. We sharpen it up in such cases. If the knife-edge is dull, it *take* just so much more for the scale to break and thus the accuracy of the weighing is affected. As to the frequency with which we find it necessary to sharpen up that knife-edge, I would say it depends altogether on how much the scales are being used and how often we are sent for.



(Testimony of Fred Tietjen.)

It is done probably every year and a half or two years or three years. The Western [1208—1148] Fuel Company would order it done. We would condemn the scale and they would have the knife-edge taken out. We made an examination of the scale, whenever the Government condemned it. The Government would go down with a ton of weight to test the scale, and, if they put the weight on the corners and found it was not right, they would condemn the scale and stop the Western Fuel Company from using it further, and the company would notify us to come and adjust the scale. I have gone up there a good many times for that purpose. The condition is one that would naturally arise from the use of the scales in the manner I have known them to be used. That would occur in any pair of platform scales. The platform of the scales is supported by posts on each corner which come right up under the bearing within an inch thereof. The posts are about 6 by 10. If any of the posts gave away the car going down would break the lever of the scale and fall through the wharf and probably drop to the bottom of the bunkers.

BE IT REMEMBERED that, thereupon, the following testimony was given and that the following proceedings occurred:

Q. What did you find was the trouble with those scales at the time you examined them on this occasion in September, I believe it was, in 1905, with reference principally to the unloading of the "Germanicus"?

A. At that time when I went down I found that

(Testimony of Fred Tietjen.)

the scale had settled down on these blocks, that is, very near, within a quarter of an inch of touching the blocks, and you really could not tell with an empty load but when you would put a heavy load on it would bear right on the block and would bind the beam.

Q. What was the reason, so far as you observed it, for that [1209—1149] scale settling in that manner?

A. The only reason I could give was either the bunkers or the bolts pulling down through the old timber.

Q. Will you point on this blue-print to the bolts that had become loosened, thus causing the scale to settle? A. Right here (indicating).

Q. The bolts on the corner of this platform.

A. Yes, sir, on the four corners of this platform.

Q. Did you notice how many or to what extent the bolts had pulled or given away?

A. No. They often pull down, expecially if the timber is old, half an inch,  $3/4$  of an inch or may be  $1/4$  of an inch, or anything; it varies at different times.

Q. What was the size of those bolts; do you recall?

A. They were about  $7/8$  inch bolts.

Q. Can you illustrate a little more particularly just how those bolts were attached to the timbers?

A. They were put down through the top of the timber, and they have a nut on what they call the corner-iron to hold the corner-iron up. They were round-headed bolts, probably an inch and a half or

(Testimony of Fred Tietjen.)

an inch and 3/4 in diameter.

Q. Taking this corner of the desk here for the purpose of illustration, it ran from one corner to the other, did it?

A. It ran from the top side right underneath to the bottom of the frame.

Q. How long a bolt was that? A. 13-inch bolt.

Q. Through what thickness of timber did it run?

A. Through 12 inches of timber.

Q. How was it attached at each end?

A. The top end had a round-head and the bottom had a large nut.

Q. A nut was screwed in at the bottom and a head permanently attached to the bolt on the top.

A. Yes, sir. [1210—1150]

Q. What had given way there?

A. That nut had simply pulled down into the wood, the wood was soft, probably beginning to decay, or something, and it pulled it down in the wood.

Q. The nut had pulled down?

A. The whole bolt had pulled down.

Q. By reason of the nut giving way?

A. By reason of the whole pressure on top.

Q. What would be the immediate effect of that?

A. That would cause the whole scale to lower.

Q. And that brought it down on the catch-block?

A. Yes, sir.

Q. Do you know what kind of timber that bolt was imbedded in? A. Yes, sir, Oregon Pine.

Q. Could the condition of that wood be due to the

(Testimony of Fred Tietjen.)

constant using of the scale, or was it due to any other cause?

A. It was due to the constant using of the scale and the cars running over it; it was bound to pull it down with the continual hammering on it, and with the timber softening, it would pull into the timber.

Q. Was there any indication that that bolt or that scale had been tampered with?

A. Not that I could see or know.

Q. And it was one of those things which you would naturally expect, would you, in the course of the business?

Mr. ROCHE.—That question is objected to, may it please the Court, upon the ground that it calls for the conclusion of the witness. The witness may state what he observed so as to enable the jury to determine that very thing.

The COURT.—The objection is sustained.

Mr. BLACK.—We note an exception.

Mr. KNIGHT.—Q. You said that that was due, in your opinion, [1211—1151] to the constant wear and the load that was placed upon the scale.

A. Yes, sir.

Q. Will you state whether or not, in your opinion, any other cause contributed to the condition of that bolt than what you have already stated?

Mr. ROCHE.—That is objected to upon the same grounds.

The COURT.—The objection is overruled.

A. Well, I don't know of any other cause. It was simply what I call a natural cause; it is an every day

(Testimony of Fred Tietjen.)

cause; that is the way we term it, an every day cause, that is all.

(Witness continuing.) The upper portion of that blue-print shows the beam, only instead of being on a frame here it is on what we call a "goose-neck." This part is not on the scale here. That represents the same beam down on the bunker. The bolt is marked No. 2. The corner-iron is to hold the scale up. The knife-edge is in a small place like that. They call it the knife-edge of the scale. The bolts which become loose are  $\frac{7}{8}$ ths by 13 inches long. There are no washers on them; they are round themselves and that does away with the plates. They are specially made round-head bolts. Where the nut is, is where it holds the corner-iron up. It is the ordinary type of bolt used on all Fairbanks-Morse scales. The scale is virtually suspended on eight bolts, two in each corner. (Then the blue-print was offered in evidence, there being no objection, and was marked Defendants' Exhibit "W.")

When I discovered that that bolt was loose I tightened it up and sawed the catch-block off a little so as to give a little more play to the scale. I found the scale about a  $\frac{1}{4}$ th or  $\frac{1}{8}$ th of an inch from the block. [1212—1152]

Q. How much distance did you give instead of the  $\frac{1}{4}$ ? A. About an inch.

(Witness continuing.) That would be about the normal distance. The scale was in good working order after the change was made. There was no other imperfection about the scale at that time that I could



(Testimony of Fred Tietjen.)

discover. After the repair, I tested the scale myself and found it to be in good order.

The effect of taking a weight in view of the vibration that exists on the wharf would depend upon whether the scales were sharp or dull. If sharp, the notches are 5 and 10 pounds. It ought to break at 10 pounds. It would make a difference of as much as ten pounds in the breaking of the scales. If the plate gets dull, the difference might go as high as 20 or 40 [1213—1152½] pounds; that is, it would take that amount to make the beam break, *but the top of the scale*. The wind has a great deal of effect on the scales and might make a difference in the accuracy of weighing of from 10 to 50 pounds. The vibration would have an effect on the life or wearing qualities of the scales in that it would help to dull the knife much quicker than if there was no vibration. It would also help to pull the bolts down by the continual jarring.

I took some weights down there in the scales-house at Folsom Street wharf about three weeks ago. I weighed a few of the ordinary carloads of coal.

Q. Will you state what weights you took?

\* \* \* \* \*

A. Well, I weighed a carload of coal on what they call the up-beam. I have the weight.

Q. Did you take a memorandum of it?

A. I took a little memorandum of it, yes. I weighed a carload of coal which was 23,560, with what they call an even beam. I weighed the same carload of coal on what they call an up-beam, which was

(Testimony of Fred Tietjen.)

23,510; that is 50 lbs. difference. I weighed another carload of 21,200 with the up-beam and the same car I weighed on an even beam at 21,275, which was 75 lbs. difference.

Q. Were those two cars loaded with coal?

A. Two carloads of coal, yes, sir.

Q. What up-beam did you give the last weighing to which you have referred, where it went 21,200 and 21,275? A. That was a strong up-beam.

\* \* \* \* \*

Mr. KNIGHT.—Q. What do you mean by the use of the [1214—1153] term a strong up-beam?

A. A strong up-beam is a beam that will go up and stay up at the top, it will probably bounce back 1/8 of an inch, and then go up and stay there.

Q. Will you describe a little bit more particularly just how you took that up-beam?

A. I took the up-beam by first taking the weight with the beam in the center and then hitting it with my finger that way and sliding it say an inch and she will go up and stay up hard and bounce back a little and then you call that the weight.

Q. Have you ever seen custom-house weighers weigh coal at that scale-house similarly to the manner in which you weighed these two cars of coal three weeks ago?

A. Well, I have seen custom-house weighers weighing, but not with quite as strong an up-beam as I did it.

Q. You have not seen them weighing with quite as

(Testimony of Fred Tietjen.)

strong an up-beam, you say?      A. No.

\*      \*      \*      \*      \*      \*      \*      \*

You really could not make a statement, to tell any particular weighing because one time it may be 20 lbs., and another time it may be 150. It is according to how hard he hits it. And how hard the beam comes up and stays up. It may be 150 lbs. or it may be 20 lbs. There is really no way of determining it.

The Western Fuel Company used to keep their scales in good condition. We have not done much work for the last five or six years probably, but before that they always kept them in good condition. I have not had occasion to examine those scales myself during the last four or five years. Nobody that I know of from Fairbanks-Morse has done so either. The last time I saw them they were in good condition. We had just taken them out and [1215—1154] sharpened them up. It was sometime in 1905.

Q. Can you describe the operation which you have seen, or the manner of operating those scales which you have seen custom-house men do during the course of weighing cargoes of coal which you have yourself actually seen?

\*      \*      \*      \*      \*      \*      \*      \*

A. In ordinary conditions when we used to go down there the coal would seem to be such a commodity that they didn't pay much attention to the weight; they would just throw the beam back this way or that way and call it the weight. One time it may be more than others. It really was what you call a snap weight.

Mr. KNIGHT.—Q. They did it pretty quickly?

(Testimony of Fred Tietjen.)

A. A catch weight; there was no way to judge the difference in it.

Cross-examination by Mr. SULLIVAN.

I should say it was 10 or 11 years ago when the Dunsmuir's had the Folsom Street bunkers that I first examined the scales there. The next time I examined them was in 1905 under the Western Fuel Company. That was the time when a certain complaint was made about the platform scales resting on the uprights. It was only three weeks before that that we had made the last preceding examination of the scales. At that time we repaired the scale and put the knife back in good condition. In other words, three weeks before the incident of 1905, I put the scales in perfect condition; the bolts were tightened, the knife-edge sharpened and the scales were in as good condition three weeks before this discovery of the resting of the platform on the uprights as they had ever been. I noticed the difference in weight at the time of the existence of that defect, caused by the platform resting on the upright. I went down there and we ran a car of coal on the scales and as soon as we did it, the beam on the scales stuck; it would not move; so then I got down underneath and examined it. I remember that you could move the pointer about a ton or three tons and then it [1216—1155] would not register at all. The beam would just stick in the center and refuse to move. I have no idea how long that upright had been interfering with the operation of the scales. I don't see myself

(Testimony of Fred Tietjen.)

why they could not see it when they were weighing. Mr. Wooster sent for me first. I was not surprised to find that the scales were out of order after I had repaired them three weeks before, because that happens often. The defect that I noticed was that the bolt had stuck in the timber. Probably the wharf got out of shape a little bit in taking on a cargo of coal. There was a pulling down through the frame of the scale. I remember hearing at the time from Mr. Wooster that the schooner "Dumbarden" had weighed out 409 tons short in a cargo of 4707 tons. I don't remember the month in 1905 when this incident occurred. In answer to the question whether I, at the same time, discovered that the steamer "Germanicus" had been unloaded at Folsom Street with a shortage of 350 tons, in a cargo of 5950 tons. I would say that all I know is that Mr. Wooster told me there was a big shortage; I didn't know what it was. There was complaint regarding the shortage on both steamers, however. I cannot remember how many times I went down to the Western Fuel Company's docks before 1905. The books or memorandum which I kept was destroyed in the fire; that is the reason they cannot be produced at the present time. After the fire I made no repairs at all to the scales myself, personally, nor did the Fairbanks-Morse people make any that I know of. The frequency with which the knife-edge on the scales ought to be sharpened in order that the scales may be kept in good repair depends on the use to which the scales are put. I would say that an ordinary, average knife-edge in an ordinary



(Testimony of Fred Tietjen.)

scale of this type ought, if the scale is subjected to rough usage where thousands and tens of thousands of tons of coal in a month are weighed, to be repaired or sharpened about every three years. Whether the [1217—1156] Western Fuel Company's scales should have been sharpened three times from 1906 to 1914, a period of eight years, depends on how frequently they use the scales; they should have been if used right along. The scales ought to have been sharpened at least once in that time, anyway. They may have had somebody other than myself or Fairbanks-Morse to sharpen the scales since the fire. I don't know.

When I went down to Folsom Street recently to make the tests that I have described, I never examined the scales; I simply tried the beam. I did not examine the knife-edge. I simply went into the scale-house and caused to be put upon the scales a certain weight and took the weight at an even beam and at an up-beam, respectively, and found a difference of 50 pounds. When I took the up-beam the beam was hard against the top, and, if I had put another 1000 pounds on those scales it could not have gone any higher. Then I made another test of two carloads in the same situation, the two carloads in one instance weighing 21,200 pounds with an even-beam, and, in another instance, 21,275 pounds with an up-beam. The up-beam was probably a little harder in this case than in the previous case. That is the method pursued by all the weighers in this coal business. I was not at the time told that I was to take these tests for

(Testimony of Fred Tietjen.)

the purpose of testifying in court, though it was suggested to me that I might probably be asked to testify. I guess that I took the weights partly for the purpose of qualifying as a witness in this case. I knew what the condition of the scales was at that time, and, when you ask me whether I made an examination of the knife-edge or posts or different parts of the scale, I would say I know that when it takes 15 or 20 pounds to break the beam, the scales are dull. I don't have to examine it. The scales were very dull in this case and might have been in that condition for quite awhile. [1218—1157] If you were making a test for splitting hairs, the scales were not in a very good condition, and, indeed, for a proper and adequate test, I would say that the scales were not in a condition for a fair and accurate test generally for the purpose of presentation to a court and jury.

On that occasion in 1905 to which I have referred, a piece of the upright under the scales was sawed off by myself. I took off probably an inch and threw the piece away. Mr. Wooster may have kept it for a keepsake, I don't know.

Q. Was not that piece that you had sawed off the top, wasn't it quite smooth and polished as if pressure had been exerted on it for some time before?

A. Well, it showed, with the coal-dust on it, it showed it had been wearing on it.

Q. The other uprights that had not been touched by the platform were dirt-covered and were rubbed, were they not? A. Yes, they always are.

(Testimony of Fred Tietjen.)

Q. But that particular piece was smooth and was polished?

A. No, it was not polished, it shows where a little dirt had scraped on there. It showed a rub, that it rubbed there.

Q. It showed a rub?      A. Yes, sir.

Q. And it showed a friction that had been continued for some little time?      A. Yes, sir.

Q. What is the effect of the pressure of one's foot against the beam-rod?

A. The minute you put your foot against the beam-rod it will stop the scale from weighing. It is really hard to tell how much pressure, it is according to how hard you put your foot against it.

Q. A slight pressure might make quite a difference in weight?

A. Yes, maybe 100 or 200 lbs. [1219—1158]

Q. That is, the mere pressure of the sole of the foot against the beam-rod would make a difference of several hundred lbs., would it not?

A. Yes, probably 500 lbs.

Redirect Examination by Mr. KNIGHT.

The mere pressure of the sole of the foot against the beam-rod would be indicated upon the beam so that anyone accustomed to using the scale could detect it immediately; the beam would stick right in the center and would not move at the time the pressure was put on it.

BE IT REMEMBERED that, thereupon, the following testimony was given and that the following proceedings occurred:

(Testimony of Fred Tietjen.)

Q. Will you state whether or not you were requested to go down and make these weights in such manner as the custom-house men were accustomed to making them?

Mr. ROCHE.—We object to that as immaterial and as not redirect examination.

Mr. KNIGHT.—It is redirect examination on the cross-examination and on the questions put to the witness as to how he went down there to make the weights.

The COURT.—The objection is sustained.

Mr. KNIGHT.—We note an exception.

The COURT.—You might ask him what instructions he received.

Referring to the tests that I made, I would say the effect of the knife-edge being dull would be simply that more weight would be required to break the beam. I would say that the dull scale might require perhaps (it is hard to say exactly) 50 or 70 pounds to break the beam. After you have broken it, it is not true that you [1220—1159] would have the same indication of a rising beam on a dull scale that you would have on a scale where the edge is very sharp.

Q. When you examined the scales previously to the time that the “Germanicus” and the “Dumbar-den” were unloaded, did you also examine these bolts that you refer to?      A. No, I did not.

Q. So you don’t know what the condition of those bolts was at that time?

A. No. You see, in taking out the scale we don’t

(Testimony of Fred Tietjen.)

have to bother the corners, we just knock the pins out of the scale and we leave the bolts and the corner-iron in there and the link—we don't disturb that at all.

Q. What do you mean by the expression tightening the bolts?

A. Tightening the bolts is screwing the bolts up in the corner-iron; when they come down a little we screw them up and bring the corner-iron up against the lumber or against the timber.

Q. Did you have occasion to screw up the bolts you afterwards found loose?     A. Yes, sir.

Q. You did not notice, however, at that particular time what the condition of that bolt was?

A. No, I did not.

Q. Did you notice the condition of the timber around it?

A. Yes, the timbers were in fairly good shape, fairly good, but they were beginning to rot out a little.

Q. Will you state what effect would be indicated on the beams if the scales were touching one of those posts in the manner you have described, how that would show itself on the beam?

A. As soon as the bearing-plank would touch that post the beam would stay in the middle, it would not move. Otherwise you could move it out or in. It would just stick in the center, it would not move.  
[1221—1160]

Q. The defective condition of the scale would become immediately noticeable?



(Testimony of Fred Tietjen.)

A. Yes, sir, it would.

The Fairbanks-Morse Company have three men engaged like myself, including myself, in adjusting scales. Mr. Shaver used to do a great deal of this work, but he died two years ago in November. Whether he did some work for the Western Fuel Company up to the time of his death, I do not know. I am myself in the country about six months in the year and the Western Fuel scales may have been adjusted by some other employee of Fairbanks-Morse during my absence. I do not know whether or not there is any charge on the books of the Fairbanks-Morse Company for work done for the Western Fuel Company on their scales since the time of the fire. I am in the working department and not in the book-keeping department of the store.

Q. Are you able to say at what point the scales cease to work when they are in a defective condition such as you found in 1905?

A. They showed they wouldn't work at all. When I went down and put on a car of coal in there the scales simply stood on the center, and I knew what was the matter, that there must be something either broke or hanging on the lever of the scale.

Q. You are not able to state then how much of a weight it was necessary to put on those scales in order to bring the scales down to the top of the block?

A. No. You could probably take and test it with a ton and it would go all right, but if you put 5 tons on it would go right down and rest on it.

(Testimony of Fred Tietjen.)

Q. There would be a point beyond which it would not register weight? A. Yes, sir.

Q. But you don't know what that point is?

A. No, I don't know what it is.

Q. It would register weights up to that point, whatever it is? [1222—1161]

A. Yes; you may take the scale empty, and it would balance just as nice as it could, but when you put a load of five tons on it it would not work at all.

Recross Examination by Mr. SULLIVAN.

At the time when I made the examination in 1905 the scales would weigh up to a certain point; that is, up to 1,000 pounds or 2,000 pounds, but when you got a heavier load, of probably 5,000 pounds, it would stick. The weighing would not depend upon the position of the car on the platform at the time. Mr. Smith was not present at the time when I made my examination of the scales in 1905, nor was Mr. Mills or Mr. Mayer. The weigher for the Western Fuel Company was a gray-haired man. (Here stated by Mr. Moore that the weigher was Mr. Delaney).

The extent to which the weighing is affected by pressure against the scale-rod depends altogether on the amount of pressure. A slight pressure would affect the scales a whole lot; that *it* is, the sensitive part of the scale. A very slight pressure would affect the scales slightly; a very heavy pressure would affect them considerably.

Further Redirect Examination by Mr. KNIGHT.

Mr. KNIGHT.—Q. Suppose you should put your

(Testimony of Fred Tietjen.)

foot up against that rod, if you were sitting there, or suppose you should lean against the scale-rod, what effect would that have on the motion of the beam?

A. The motion of the beam would stop, it would stick there.

Q. How slight a pressure could you exert on the scale-rod and not have it noticeable in the operation of the movement of the beam?

A. The weight of a lead-pencil against the rod will show an effect on the beam, so you can see how slight it is. [1223—1162]

Q. Would anyone familiar with weighing immediately detect that there was some pressure of that kind?

A. Why, I should think they ought to.

Further Recross-examination by Mr. SULLIVAN.

When I was down at Folsom Street a few weeks ago I noticed the rod beam extending from the platform of the scales to the scales-house. I didn't observe whether or not it was exposed. (Admitted by counsel for defendants that the scale-rod is not covered "where it is running up to the framework of the wharf," but insisted by said counsel that it is boxed in after it reaches the scale-house itself. The witness was here shown a photograph of the bunker, including particularly the scale-house.) The rods shown in this photograph are both connected with the scales. There are two scales and each rod connects with one of them. There is an exposure of about the height of the car, about 8 or

(Testimony of Fred Tietjen.)

9 feet. I don't believe the wind would hit this rod very strong because it is behind a lot of timbers and rafters, but, even assuming the wind did hit the rod, I would not imagine it would have an effect of more than five or ten pounds. Anybody standing down there could most assuredly touch the rod and affect the weights, but the man weighing would know it right away. He ought to know it. Sometimes the rods of the scales are thus boxed and sometimes they are not. The box at times gets knocked off. The general way, however, is to box the rod in. I think it should be covered in. It is bad construction to have it exposed. (The photograph referred to above was here introduced in evidence and marked "U. S. Exhibit 160.") [1224—1163]

Further Redirect Examination by Mr. KNIGHT.

Those scales were originally put in, I believe, for the Dunsmuir. I think they were actually installed by Mr. Shaver and a man named Allis, employees of the Fairbanks-Morse Company. When Fairbanks-Morse Company install a scale they furnish a plant and install it to the best of their ability.

**[Testimony of John Gallaway, for the Defendants.]**

JOHN GALLAWAY, a witness called for the defendants and sworn, testified as follows:

Direct Examination by Mr. STANLEY MOORE.

I am now and have been continuously since 1893 a police officer of the City and County of San Francisco. For five years I have been stationed at the Pacific Mail Dock on my regular beat and am sta-

(Testimony of John Galloway.)

tioned there now. I am acquainted with David G. Powers, and have been acquainted with his family for 30 years. I was present four or five months ago upon the occasion of a conversation between David G. Powers and a man by the name of Larry Brennan, a gatekeeper of the Pacific Mail Company.

(At this point counsel for the defendants asked the witness to relate what David G. Powers said upon said occasion, but, upon objection by counsel for the prosecution that sufficient foundation had not been laid for the impeaching question in that no reference had been made to Larry Brennan and no specific reference to the time and place of this alleged conversation in the examination of David G. Powers, the Court permitted said David G. Powers to be recalled for further cross-examination.) [1225 1164]

**[Testimony of David G. Powers, for Defendants  
(Recalled Cross-examination).]**

DAVID G. POWERS, a witness recalled for further cross-examination by the defendants, testified as follows:

Further Cross-examination by Mr. STANLEY MOORE.

Mr. STANLEY MOORE.—Q. \* \* \* I will ask you do you recall having had a conversation with Mr. Brennan in the presence of Officer Gallaway, about five months ago, down by the Pacific Mail Dock?

A. I have had several conversations with Mr.



(Testimony of John Galloway.)

Galloway and Mr. Brennan.

Q. Then, directing your attention now to a particular conversation, I desire to ask you if you did not open the conversation by saying to Mr. Brennan, "Have you seen the papers," and that in the course of that conversation you referred to the Western Fuel case, and said that it was a cinch and dead easy, and that you expected to make from \$50,000 to \$60,000 from the Government out of it, and that there was a man back East, in the sugar cases, that had gotten a pile of money, or a very large amount of money?     A. I did not.

Q. Do you state that no part of that conversation took place?     A. Yes, sir.

Q. What part of the matter that I have stated to you as actually stated by you in the course of that conversation?     A. None at all.

Mr. STANLEY MOORE.—That is all.

Mr. SULLIVAN.—That is all.     Wait a while.

Q. Did you have any conversation at all with Larry Brennan in the presence of Officer Galloway?

A. Yes, sir, I had several conversations. [1226—1165]

[Testimony of John Galloway, for Defendants (Recalled).]

JOHN GALLOWAY, a witness recalled for the defendants, testified as follows:

Direct Examination by Mr. MOORE.

Mr. STANLEY MOORE.—Q. Whereabouts was it that this conversation took place between Mr. Powers and Mr. Brennan in your presence and hear-

(Testimony of John Galloway.)

ing, Mr. Galloway, where was that?

A. Right in front of the gateman's little house, right where he stands there, in front of Pier 42.

Q. And Pier 42 is one of the piers that is occupied by the Pacific Mail Company? A. Yes, sir.

Q. What is the business or occupation of Mr. Brennan, if you know?

A. He is the gateman at Pier 42.

Q. And you state that that conversation took place about how long ago?

A. In the neighborhood of four or five months.

\* \* \* \* \*

Mr. STANLEY MOORE.—Q. I will ask you whether or not it is not the fact that Mr. Powers stated, in your presence and hearing upon that occasion that he expected to make from \$50,000 to \$60,000 out of the Government in the Western Fuel Case, and that there had been a man back East who had gotten a big pile of money from the Government in the sugar case?

A. He stated that he expected—

Mr. ROCHE.—Now, just a minute.

The COURT.—Answer that “Yes” or “No.”

A. Yes, sir, that is about the conversation.

The COURT.—Q. What is desired of you, Mr. Galloway, is what Powers said at that time, concerning his expectation of getting money from the Government in this case, or the Western Fuel case, and what had occurred in the East with regard to the sugar cases.

A. He made a statement to Mr. Brennan, [1227—

(Testimony of John Galloway.)

**1166]** stating that he expected to get about \$50,000 or \$60,000. As soon as he made that statement, you know I kind of looked at him, and kind of smiled; I was standing right alongside of him, and he looked at me and says, "Well, that fellow got it back East, got money back East out of the Government," and he didn't see why he couldn't get it. The conversation was just about what you stated, sir.

Mr. STANLEY MOORE.—Q. Do you recall whether or not he mentioned in what case it was that the fellow had gotten the money back East?

A. Well, no, I would not swear to anything like that, because I don't just remember the words, word for word; I don't just remember that. I remember him stating about the \$50,000 or \$60,000, and mentioned about the man East getting a lot of money out the the Government.

Cross-examination by Mr. SULLIVAN.

I know Mr. J. B. Smith very well. I have known the Smith boys for years and years. I don't have a friendly feeling for them any more than just to say, "How do you do, Mr. Smith?" I have been intimately acquainted with the Smith boys, however, since they were babies. I have no relative employed by Mr. Smith to my knowledge. My mother was never employed in the Smith household in any capacity.

Q. What time of the year did this conversation take place? A. You mean with Mr. Powers?

Q. Yes.

(Testimony of John Galloway.)

A. About five months ago, between four and five months ago.

Q. Do you remember the time of day it occurred?

A. Well, I could not say whether it was in the forenoon, or one or two [1228—1167] o'clock, or twelve o'clock. I didn't pay any attention to that.

Q. And, of course, you don't remember the month?

A. No, sir, I could not; I should judge about four or five months ago.

Q. Do you remember in that conversation that Brennan said to Dave Powers, "Why don't you let go of this case, because the Western Fuel Company has too much money to let it go to trial?"

A. No such conversation; no, sir.

Q. Did he say anything at all to that effect?

A. No, sir.

Q. Anything like that?      A. No, sir.

Q. Did Brennan ask him to let go?

A. No, sir, not in my presence.

I never spoke to J. B. Smith or Ed. Smith or to any of the employees or officers of the Western Fuel Company or to anybody else about this conversation, except to Mr. Brennan right then and afterward, except, of course, that I was asked concerning it to-day before I was subpoenaed. I was subpoenaed a short time ago on my beat. I never got a bit of fuel in my life except what I paid for and I don't deal with the Western Fuel Company.

Q. What particular case did he refer to as the case

(Testimony of John Galloway.)

back East, where the man got a large reward and a pile of money?

A. I couldn't exactly tell you, I don't know, but I imagine the one it was, that it was that sugar case, the one he was talking about.

Q. You imagine it was the sugar case?      A. Yes.  
[1229—1168]

[**Testimony of Joseph H. Desmond, for Defendants.**]

JOSEPH H. DESMOND, a witness called for the defendants and sworn, testified as follows:

Direct Examination by Mr. STANLEY MOORE.

I reside in San Francisco. I am a foreman of the Western Fuel Company, stationed in that capacity sometimes on a chute and sometimes on the runway, working, therefore, at the offshore pockets or on the tracks on top of the bunkers. I have been with the Western Fuel Company very near ever since they took the Folsom Street bunkers. Before that I was employed by R. Dunsmuir & Sons. I was with them five or six years. Therefore, I have been on the bunkers altogether almost fifteen years. I have charge of the top men; that is, the men up on the bunkers.

I am the person who cut out a notch in that one of the two beams under the scales-house which is furthest out toward the end of the bunkers. I cut it out with an axe at the time when I was working for Dunsmuir & Sons. We were at that time handling Roslyn coal which contains very big lumps, some half the size of a car. I therefore cut this



(Testimony of Joseph H. Desmond.)

notch in the beam with my axe to save stoppage and trouble around the scales. If a car goes on those scales so overloaded that the coal would scrape and grind against that beam, the result would be that sometimes the scale would be broken down and sometimes the coal would be thrown off the car. As a matter of fact, I have seen the scales actually break down two or three times from that cause. Even without being ground against the beams at all, the cars are sometimes so fully loaded that their weight is pretty close up to the capacity of the scales. If the coal is loaded too high the men trim it off before they get to the [1230—1169] scales. If they did not do so the scales might be broken down. For that reason Eddie Mayer two or three times gave orders for the men not to load the cars so heavily. I heard him say that and it was my permanent or standing order all the time. I see that those orders are carried out.

When a ship comes alongside the bunkers to be discharged of coal it is my duty to see that a tower or hopper is placed opposite each hatch that is working and that the platforms are all down in their proper places. The platforms are placed under the towers to keep the coal from falling down into the bunker below. We have one or two men employed to clean up such coal as does fall down on these platforms and to shovel it up and put it right back into a car. If I am not present so as personally to oversee the placing of the platforms beneath the

(Testimony of Joseph H. Desmond.)

towers, my men always take care that that is done. I have seen the custom-house officers come down to the dock before seven o'clock in the morning and go down the runway to see if everything is all down and secured under the bunkers there and that there is one platform under each tower. I have also seen the inspectors looking out for that. The inspectors are the men who have charge of all the weighers and go around the steamers and see that everything is all right. I have heard Eddie Mayer severely reprimand the men for bringing the cars up to the scales-house overloaded. He hollers out on such occasions in a loud tone of voice. If a train of cars should be dumped before being brought on the scales, the noise would be loud enough to be heard right up to the scales-house. Both of the trains in bringing imported coal up to the scales for weighing are supposed to keep moving all the time and without stop. I have never heard Eddie Mayer say to anybody working down there [1231—1170] on top of the bunkers that he wanted to have a trainload of coal dumped into the bunkers before it was put upon the scales. Occasionally, by accident, it will happen that a chute from one of the hoppers will get stuck by a lump of coal, in which case the coal flows down and off of the car. It is then liable to break the shoe off the car and stop all operations. I recollect such kinds of accidents. The shoe connects the car with the third rail and is the appliance by which the power is communicated to the car. Such coal as overflows through this clogging up of the chute is shoveled back

(Testimony of Joseph H. Desmond.)

into the car. It is always thus shoveled back into the car. It is not a fact that such coal is shoveled down into the bunkers.

When I say I sometimes work offshore, I have reference to the loading of the barges. A barge is loaded by means of an electric conveyor which can be moved right along in front of the offshore pockets so as to tap the different pockets. The conveyor can be moved right out to the end of the bunker where there is a turntable. You can move the conveyor right along the side of the bunker as far as the offshore pockets run. The offshore pockets lead out from the front of the bunker toward Goat Island. Where the outer or lower end of the inshore bunkers begin, you can also tap the offshore pockets. We have dumped screenings into those barges without weighing them at all. It sometimes happens that we will have an offshore pocket entirely open and a barge below being loaded at the same time that a ship is being discharged of imported coal, in which case we may be running coal from the ship down to the offshore pockets after said coal has passed over the scales, and, at the same time, be loading screenings which are not weighed at all into that barge. We put the screenings in so as to get an average coal.

[1232—1171]

I remember a man by the name of Samuel Griffin who has worked down there on top of the bunkers. He has never been a regular man of any kind. If we ran short and could pick him up we put him on running screenings or something like that.

(Testimony of Joseph H. Desmond.)

I was working on the bunkers at the time of the car strike in 1907. It is not a fact, so far as I know, that coal was at that time or ever dumped into the bunkers without being weighed. That has never been done. A custom-house officer would always be present when coal on which the duty was to be paid was weighed from those chutes.

I am acquainted with Mr. David G. Powers. I had two conversations with him on the street-cars. One occurred on the Mission Street car, but I could not say when. I believe it was after this case was going on. I was coming from work at about ten o'clock at night. We had been doing overtime work on a rush steamer.

Mr. STANLEY MOORE.—Then I will ask this question, Mr. Desmond: Is it or is it not the fact that on that occasion Mr. Powers stated to you and said to you, "I'll fix J. B., and I'll get that Jew, Mayer"?

A. Yes, sir.

Q. And that was David G. Powers?

A. Yes, sir.

Cross-examination by Mr. SULLIVAN.

I worked for the Dunsmuir people when my step-father was the foreman there. He worked for the Western Fuel Company for a while after they took over the Dunsmuir property. His name was Charles Bogen. I worked under him. He never worked as foreman for the Western Fuel Company. He was a kind of a dumper. We were both working in the same capacity. I have no office on the Folsom Street



(Testimony of Joseph H. Desmond.)

Dock, nor anywhere. I am generally employed on top of the [1233—1172] bunkers or down on the conveyor. The conveyor lies at the end of the off-shore pockets. I am located on the conveyor itself. It is operated by electricity and works along the entire bunker from one end to the other. I am the biggest part of the time on the conveyor. At such times I am located about 20 or 25 feet from the deck or floor of the bunker. I could not tell you whether the greater part of my time during the last seven or eight years has been spent upon the conveyor. I have special charge of it. In answer to the question whether my place is of necessity upon the bunker while the barges are being loaded, I would say that sometimes I am up on top of the bunker and sometimes below, though, as a general proposition in such cases, I am on the conveyor. There are four or five men working up on top of the bunker. Four are operating cars. There are also one or two other men. Eddie Mayer is there. It is their duty to be on top of the bunker all the time. It is not mine. It is my duty to be there when we are getting ready for a steamer so that I may see everything is in perfect order. Then I go down to the conveyor if we happen to be loading anything offshore. I am responsible for seeing that everything is all straight on top of the bunker; seeing that the towers are in place and that the electricity is going all right. It sometimes happens that barges are being loaded at the same time the ship is being discharged. At such times I am on the conveyor.



(Testimony of Joseph H. Desmond.)

It was during the Dunsmuirs' time that I cut out the notch in the beam that supports the scale-house. I could not give the exact date. I made the cut kind of round. I could not say how deep I made the cut. I have now and then looked at that arch. I am sure it is not six inches deep. The cut was made at the time the company was importing Roslyn coal. I made the [1234—1173] cut for the purpose of preventing the coal from striking the beam as the cars were approaching the scales, so the coal would not fall down on the scales. I cut only one of the beams. When a car of coal is weighed upon the scales it goes forward before it is switched back and passes the other beam far enough to get entirely clear of it. The other beam is over the scales. The beams are of the same kind exactly and are each of them the same distance over the scales; that is to say, their height is the same.

(The witness was here shown a photograph, U. S. Exhibit No. 5.)

This photograph correctly represents the beams as they are upon the bunker today. I see that the first is "chawed" off and that the second is not. I did not cut an arch in the second beam. I did not understand that if it was necessary to cut the first beam in order to avoid accidents by the striking of the lumpy coal against the beam it would also be necessary to cut the second beam for the same purpose. I cut the arch in that first beam for the purpose of letting the Roslyn coal pass under it without it being struck, and to avoid breaking the scales. That beam

(Testimony of Joseph H. Desmond.)

which I cut was exactly level or even with the second beam. The second beam is also over the scales and if any lump of coal struck the second beam and fell down upon the scale it was liable to break the scale, and I never touched the second beam at all with the axe at that time. I did nothing to it for the purpose of preventing the coal from scraping off the car or coming in contact with that beam. I did not notice at all at that time that if the coal projected above the top of the car a sufficient height to strike the first beam, that after I had cut the first beam the same coal would necessarily strike the second beam. I did not understand that if I cut the first beam [1235—1174] to avoid these accidents, that I would necessarily have to cut the second beam. It is not a fact that that first beam was notched out by the overloaded coal striking against it; it was cut off. The reason why it was not necessary to cut out the second beam was this: If a man saw he was going to strike the second beam he would stop the train and clear the coal from touching it. The reason why this precaution was not taken in relation to the first beam also was that the motormen were stationed in front of the motors at the time we cut the notch. The men sat in front instead of between the cars. They could not, therefore, see whether the coal was going to strike the beam. They were in front of the car. On the other hand, having passed the first beam after it was arched out, the motorman would be able to see whether his coal was going to strike the second beam and stop in time. The second beam is a very short distance ahead. It

(Testimony of Joseph H. Desmond.)

is immediately above the scale. If any coal struck the second beam it would come down upon the [1236—1174½] scale and would do the same damage as if the coal struck the first beam. I believe the second beam is nevertheless in the same condition as when I went to work for the Dunsmuir.

The third rail is between the other two rails of the track. If the chutes got clogged, the overflowing coal would fall down on a pitch and go in by the third rail. The side of the car extends a foot or two, more or less, on each side of the track. The coal gets onto the third rail by coming down at both ends of the car. The chutes face the middle of the car. The cars are longer than they are wide. At Folsom Street they are all of the same pattern and have been ever since I commenced to work for the Western Fuel Company, except that they have been improved by additions built up on them to increase their height and provide thereby for a larger load. I couldn't say when that change was made. The drawheads on the cars are not all alike. Some are bigger and of a different pattern. I couldn't say on how many cars the drawheads are alike. The drawheads do not come perfectly flush with one another. There are cases where the drawhead of one car is a little bit higher than that of another car. The links are all straight links and have been ever since I commenced working for the company. I very seldom worked on the Mission Street bunkers, but I have seen the cars in operation there. Those cars are not all alike. Some were small dummy cars and others were some-

(Testimony of Joseph H. Desmond.)

thing like the Folsom cars. Nor were the drawheads all alike at Mission Street. I couldn't say whether the links were straight links or not. I never took notice as to whether I ever saw a link with a set-off in it.

I have said that I received instructions not to overload the cars, so as to exceed the capacity of the scales. The capacity of the scales at Folsom Street is, I believe, 25,500 pounds. [1237—1175] I couldn't say whether that is the maximum capacity. Two cars are weighed at a time at Folsom Street. I do not know their weight. Mr. Mayer quite often told me to see that the cars were not overloaded. I also heard him giving instructions to the other men. He first gave me that instruction when I began working for the Western Fuel Company and he gave me the same instruction a couple of times afterward. He did not give me that instruction during the last year or during the last two years, and I could not tell you whether he did so within the last five years. I quite often heard him instruct the men working on the bunkers not to overload the cars. He did not repeat that instruction every day. He would holler out these orders from the window, loud enough for the custom officer to hear him. The custom officer always seemed to be present when these instructions were given.

I couldn't say how long it was after the Western Fuel Company took charge that this planking was taken up. I was present when it was done, but I did not take part in ripping up the flooring. Carpenters



(Testimony of Joseph H. Desmond.)

did that work. The temporary platforms were made after the bunkers were renewed. Those platforms are all in place underneath each tower, but we have some extra ones ready to put down if necessary. Sometimes the towers are close together, sometimes they are 10 or 12 feet from each other. Sometimes the towers are as much as 100 feet apart. In that case the space between is generally left open. It is the space under the tower that is covered. So far as I know, none of these platforms has been constructed and laid down by the Western Fuel Company within the last three months. I have not seen any carpenters working there within that time, but I would not have had anything to do with such carpenters had they been there. Mr. Schultz would have had charge of them. The carpenter who is always employed there is named Johnson. His name is Jack [1238—1176] Johnson. The other carpenter is Vincent. One of these carpenters is generally employed about the bunkers and the other around the barges and in the yard.

I go to work at seven o'clock in the morning. I remember the car strike of 1907. At that time the custom-house weighers did not get to the bunkers until about eight o'clock. During that strike the ships did not commence discharging as usual about seven o'clock in the morning. They began at eight. Twelve o'clock and five o'clock are respectively the quitting times. The stevedores are employed by the hour, as are also the men on the bunkers, and that has been the practice right along. I am sure too that



(Testimony of Joseph H. Desmond.)

the men quit at five o'clock during the strike. The men on the bunkers went to work at seven o'clock as usual during the strike. When I said that the work began at eight o'clock, I was referring to the stevedores and the custom-house officers.

I have put screenings into the barges without weighing them in advance. Those screenings were not weighed by anybody. I couldn't say when I last so deposited screenings in a barge without weighing them. I certainly have seen that occur within the last five years. It was certainly within the period of time that I have been working for the Western Fuel Company. It has happened quite often, but I could not say how many times. In such cases, when the screenings were thus not weighed, the man who dumped the cars would keep a tally of the cars. Every time that the screenings were thus deposited in the barges without being weighed, they were evenly loaded on the cars. The cars were filled. The screenings were the ordinary screenings. They were taken from the screenings bin. There is no record of the quantity of screenings in that bin. As to the method in which [1239—1177] the screenings were brought from the bin to the barge, I would say that we have a switch there which switches right off into the offshore pockets. They open one of the pockets of the offshore bunkers and drop the screenings into the pocket, and the screenings run right down the conveyor and into the barge. I believe Mr. Mayer keeps a record of each pocket. They keep a record of the screenings by tallying the cars when-

(Testimony of Joseph H. Desmond.)

ever screenings are delivered. I should say that I have seen that done more than a dozen times within the last eight years, but I couldn't give the number of times. It would be more than twice a year.

When coal is being deposited into the hoppers from the ship considerable noise results. The hoppers are lined with sheet iron and when the coal strikes the hoppers from the buckets it makes a report. That noise is constantly occurring when the ship is being unloaded. It exceeds a little in loudness the noise caused by the coal being run from the hoppers into the cars, but the two noises are very near the same. I could not say whether a person sitting in the scales-house could distinguish between these two noises. The noise created by the falling of coal into the bunker below would depend upon whether there was any coal in the bunker already. You could hear the noise even if the bunker below had a lot of coal in it. I could not say whether it would be as loud as the noise created by the loading of the cars or the loading of the hoppers. I could not tell you whether a man in the scales-house could hear coal falling upon coal in the bunker if, at the same time, coal was falling from the tubs into the hoppers and from the hoppers into the cars.

I do not know when Samuel Griffin, an extra man, first went to work for the Western Fuel Company. He was working for the Dunsmuirs when I was there. He worked a couple of times only [1240—1178] for the Western Fuel Company. Sometimes I am off the bunkers. I am not away from the bun-

(Testimony of Joseph H. Desmond.)

kers the greater part of the time. When Samuel Griffin was there he worked as a motorman and dumper operating the cars. He did not work off and on for the Western Fuel Company for four years that I know of.

I could not tell you how long I have known Dave Powers. The conversations with Dave Powers to which I have referred on direct examination took place after this case was going on. I could not tell you whether it was in the month of December last or whether it was before last Christmas. I could not say either whether it was before or after the Christmas of 1912. I can't say whether the conversation took place within the last 30 days or two or three years ago, but it was after the case came up; I know that. I cannot fix the time, I cannot fix the year. I couldn't tell you when the conversation took place at all. When the conversation took place I was on the Mission Street car after ten o'clock at night, as I was coming home from overtime work. I boarded the car at East and Mission. Dave Powers boarded the car somewhere around Thursday (Third Street?), believe. I was inside of the car when he came in. He sat right in front of me. He rode out to 30th Street where I live and continued past there. I did not know where he was living at the time. I did not engage in conversation with him the entire length of the ride. The conversation was just a couple of minutes. I did not speak of anything else but the Western Fuel Company's case. I do not remember any other part of the conversation except

(Testimony of Joseph H. Desmond.)

that part stated by me. In answer to the request that I state exactly what was said by me on that occasion, I would reply that I met Dave Powers on the cars and he said he would get J. B. and this Jew, Mayer. That is all that I can recollect that he said. That is the first thing and all he said. He got on the car at Third and Mission. [1241—1179] From the time that he made that remark until I got off the car at 30th Street he didn't make another remark to me and I didn't say another word to him except just, "That is pretty hard." That was the entire conversation. We talked of nothing else. I did not report that conversation the next day to Mr. J. B. Smith nor to Eddie Mayer. I did not, so far as I know, tell J. B. Smith that Dave Powers was going to get him, nor did I tell Mr. Mills or Ed. Smith, or anybody else. I am almost sure of that. To-day was the first time I ever uttered a word about this conversation except that I spoke to Mr. Moore about it a month ago. Mr. Moore does not represent me in this case. I told him about it in this office. Up to that time I had spoken to no one else. When I was called up to Mr. Moore's office I told him about it and he asked me and questioned me about telling the truth about anything I knew, and I told him.

Redirect Examination by Mr. STANLEY MOORE.

When Dave Powers said he was going to get "J. B.," I understood that he was referring to Mr. James B. Smith. I had as little to say to Dave Powers as I could help. I simply said, "That is pretty hard." I don't recall the date of that conversation. I do



(Testimony of Joseph H. Desmond.)

recall speaking to you about it about a month ago. It was quite a time before that that the conversation took place. It was after the case began, by which I mean the time when the charges were brought in.

At the time when I worked for the Dunsmuir's the bunkers were all planked up on the inside where the towers were operating. The Dunsmuir people had only two offshore pockets, one at the end and one at the sides, and they had a high chute. The Western Fuel Company has 22 offshore pockets at the present time. The carpenters [1242—1180] of the Western Fuel Company built platforms and placed them under each tower of the inshore bunkers. When I said on cross-examination that the bunkers had been renewed, I meant that all new timbers had been put in and the piling driven anew, I don't know how long that work of renewal took. They commenced this work on the inshore part of the bunkers. While the work of renewal was going on they used the towers on the bunkers out toward the middle of the bay.

As I stated on cross-examination, after the bunkers were renewed we first had planks and then platforms. The planks were 2x12, 30 feet long and were placed under each tower that was operated. The platforms are in use to-day.

BE IT REMEMBERED that, thereupon, the following testimony was given and that the following proceedings occurred:

Q. Are the men who operate and load the trains under you and under your orders?

A. They are under my orders, sir.



(Testimony of Joseph H. Desmond.)

Q. You testified here this morning that you only chopped into one of those scale-beams, did you not?

A. Yes, sir.

Q. You said, in answer to Mr. Sullivan, that at that time, during the time of the Dunsmuirs, the man rode ahead on the coal-cars; is that correct?

A. Yes, sir, he sat in front at that time; the motor was in front of the cars, during the Dunsmuirs' time. There was a different adjustment than what there is now.

Q. And will you state whether or not while he was driving his cars, or bringing his train on to the scales, he had to be watching the scales and preparing to have his train under control so that he could bring it to a stop with the cars in the right position?

A. Yes, sir. [1243—1181]

Q. Is it or is it not the fact that when this car passed under that first beam there it would give him an idea, and when he was bringing that car to a stop, as to what the clearness would be in regard to passing over the scale before going under the second beam?

Mr. SULLIVAN.—We object to that as leading and as suggestive and as calling for the conclusion of the witness.

The COURT.—The objection is sustained.

Mr. STANLEY MOORE.—We note an exception.

Q. Mr. Sullivan asked you as to any changes made in the cars; is it not a fact that after the Western Fuel Company got those bunkers they built the sides of those cars up and the ends of those cars so as to

(Testimony of Joseph H. Desmond.)

prevent the coal from falling off of them as far as possible?

A. Well, an additional piece was put on the cars.

Q. It was put on the sides and put on the ends, was it not?

A. It was put on the top of the car, all around the car.

Q. Mr. Desmond, whether the coal falls off as the result of striking one of those scale-beams or another, will you state whether or not any of it can fall down into the bunkers below?

A. No, sir, there is 10 feet—it is all planked in from the scales, and it all goes right on the scales if it hits the scale-beam, it drops and hits the car and goes on the scale again.

Recross-examination by Mr. SULLIVAN.

Mr. SULLIVAN.—Q. At the time you say this conversation took place between you and Dave Powers, notwithstanding the fact that you had been employed by the Western Fuel Company for a long time and that you knew James B. Smith very well and that [1244—1182] you knew Eddie Mayer very well and saw them very often all you said in response to the remarks of Dave Powers was, “that’s pretty hard”; is that so?

A. That is all I said, yes, sir.

[Testimony of John Thomas Linehan, for  
Defendants.]

JOHN THOMAS LINEHAN, a witness called for the defendants and sworn, testified as follows:

Direct Examination by Mr. STANLEY MOORE.

I now reside and have resided all my life in San Francisco, and am now and have been for five or six years in the employ of the Western Fuel Company as motorman and dumper of the first two cars. Ordinarily, there are four cars in a train. When two hatches are working we run two trains. I take care of towers 1 and 2. They are the towers nearest to the scales-house; that is to say, the towers are numbered from one to four inclusive, beginning at the scales-house and running out towards the center of the bay. John Costello is the motorman of the train that runs towers 3 and 4. We are supposed to load the cars so that no coal will run off. Those are our instructions from Mr. Eddie Mayer. I have heard him give that instruction to other men and myself up there a number of times. He yells the orders out in a loud tone. Sometimes more coal comes into the car than we desire by reason of the jam in the chute, in which case we jump up on top quick and knock out the piece of coal that is clogging the chute so that the door will go up. When the coal overflows the car it falls on the platform or between the rails. I mean the platforms that are underneath the towers. This planking is placed under the towers before we start to discharge a ship. I, myself, and the other men up there put the planking [1245—1183].

(Testimony of John Thomas Linehan.)

down; that is part of my duty and a part of the duty of every man there before the ship starts. I have seen the custom-house weighers come down and see that those platforms are in place. I have also seen the Government Inspectors up there looking after that. The purpose of the platforms is to catch the coal that overflows so that it won't go into the bunker. We have one or two men regularly employed to scrape up such coal as overflows onto the platforms and shovel it back into the cars. That has always been done since I have been there.

I know that there are a couple of beams upon which the scales-house rests. Our orders are not to overload the cars so heavily as to strike those beams.

If coal overflows the cars and gets down between the rails the train is crippled, the shoe torn off, and maybe the wires are torn off the train too. I have known that to happen. It has happened to my own train. The consequence is that the discharge of the ship is delayed. It stops the work completely. It was about a month or two ago that this accident last happened. On that occasion the wires were torn off my train and the train caught fire and was crippled for three days.

It is not true that instructions are given down there on that bunker to shovel coal off of those platforms into the bunkers below without its being weighed, nor are there any instructions down there to dump a trainload of cars before it is brought to the scales if we get a chance. I do not know of any trainload of cars being dumped that way before being

(Testimony of John Thomas Linehan.)

brought to the scales. If we did so dump a trainload, you could hear the noise all over the bunkers. It would take about five minutes to unload the four cars of the train. It would take about a second for a bucket coming up from the ship to trip into the hopper below. If, [1246—1184] for instance, when a ship was discharging, I tried to dump my train before bringing it to the scales, the custom-house officer would know that there had been something wrong because my cars would be empty and I would be in the way of Mr. Costello and I would have to get out of his way. There is only one track to load on under those towers. If I tried to dump my train, therefore, I would hold him back or I would have to run up to the scales with an empty train which would throw me out of a turn. The trains appear at the scales during the discharge of a ship in pretty regular order. We follow one another all the time. One of the men that we have up there on the bunkers to shovel coal back into the cars when it falls down on the platform is named Vincent, and they hire any other man they can find. The company has had numerous different men. If we dumped a trainload of cars down into the bunkers when they are empty, or nearly empty, you could hear the noise right up to the scales-house. Besides, the bunkers are made of wood. They are slanting on the bottom and are about 20 feet deep. When there is a considerable quantity of coal in the bunkers and we dump a trainload of cars into them, it makes a considerable noise.

It has often happened that in loading the barges



(Testimony of John Thomas Linehan.)

screenings are dumped into the barges without being weighed. We generally chalk down a mark for every load of screenings that we thus take to the barges. Whoever is running the train keeps this tally. Sometimes I have seen coal, after passing over the scales, taken down into the offshore pockets and shot right into the barge. That happens quite often. The company averages the barge coal by putting in screenings. The coal as it comes directly from the ship is more lumpy coal than we deliver to the barges. [1247—1185] It has often happened that the offshore pockets would be open leading directly into the barge and that at one and the same time we would be delivering coal which had been weighed and screenings which had not been weighed directly through the pocket into the barge.

Q. Mr. Linehan, are you acquainted with Dave Powers?     A. Yes, sir.

Q. How long have you known him?

A. Well, I have known him ever since I worked at the Risdon Iron Works, I guess that is about 13 years ago.

Q. Do you recall ever seeing him or having him mention this case to you?

A. Yes, sir, I have met him twice since.

Q. Will you state whether or not you met him going home one night on the car line of the Third Street line?

A. It was on the Mission Street line I met him.

Q. On the Mission Street line.     A. Yes, sir.

Q. Do you recall what the date of that was?

(Testimony of John Thomas Linehan.)

A. Well, I don't know what date it was; it was sometime in the middle of last year.

Q. It was sometime in the middle of last year.

A. Yes, sir.

Q. Was it after the indictments had come up, when there was talk in the newspapers about these cases,—was it after that? A. Yes, sir, it was after that.

Q. Will you state whether or not he said on that occasion, "I am going to make that Jew sweat?"

A. He did, yes, sir; he said that not on the first occasion, but on the second occasion I met him on Market Street.

Q. What did he say?

A. He said he was going to "make Jew Mayers sweat," and he asked me if I would go and tell him that, [1248—1186] and I said I would. He asked me two or three times to tell him that.

Q. And that was when you met him on Market Street? A. Yes, sir.

Q. When was it that you met him on Market Street?

A. I guess that was a month after the first time I met him, a month or so, I don't know exactly the date.

Q. And what was it he said to you upon that occasion? A. Well, he told me—

\* \* \* \* \*

Q. And Mr. Linehan, in your opinion that would be how long ago?

A. I guess 4 or 5 months ago—oh, more than that; I guess about six months ago.

(Testimony of John Thomas Linehan.)

I know the beams on which the scales-house rests. I have heard Mayer, when men would come up there with their cars overloaded, open the window and holler and tell us that he didn't want us to come up that way again; that it would break the scale down. The scale has broken down twice with me from that cause. I do not know exactly what part of the scales it was that broke, but I know that the blacksmith, Mr. Olinder, came up and made a new link.

(The witness, Linehan, was here, by consent of counsel and the Court, withdrawn for the present in order that the witness, Lawrence Brannan, might be put upon the stand.)

**[Testimony of Lawrence Brannan, for Defendants.]**

LAWRENCE BRANNAN, a witness called for the defendants and sworn, testified as follows:  
**[1249—1187]**

Direct Examination by Mr. STANLEY MOORE.

I now live and have lived in San Francisco 55 years next month. I am now and have been for about 40 years in the employ of the Pacific Mail Steamship Company. I am gate-keeper at present and am stationed in that capacity at the gate which leads into the wharf at Pier 42. I have a little house there to protect me from the rain and stormy weather. I was acting as gate-keeper last year. I am acquainted with Mr. David G. Powers, and have been acquainted with him for a good number of years.

Q. Do you recollect a conversation that you had with him sometime last year, in the presence of a police officer by the name of Galloway?

(Testimony of Lawrence Brannan.)

A. I do, well, sir.

Q. About how long ago, according to your recollection would that conversation have been?

A. Well, to the best of my recollection, it was about five months.

Q. It was about five months ago?      A. Yes, sir.

Q. Now, Mr. Brannan, I want to ask you whether it is not the fact that on that occasion, and in the presence of yourself and the police officer, Mr. Powers stated to you, either in words or in substance, "Have you seen the papers?"—

A. (Intg.) Yes, sir, he did.

Mr. SULLIVAN.—Wait a while.

Mr. STANLEY MOORE.—Q. (Continuing.) And that he spoke about the Western Fuel Cases?

A. Yes, sir, he did.

Q. And that he said he expected from \$50,000 to \$60,000 from the Government.      A. Yes, sir.

Q. And that some question being asked of him, he said it was a cinch, and that it was dead easy.

A. True.

Q. And that some man back in the East had gotten a big pile of [1250—1188] money in a sugar case?

A. That is right, sir.

Cross-examination by Mr. SULLIVAN.

I am still a gatekeeper for the Pacific Mail Steamship Company. I have been thus employed for about four years. Before that I was watchman on the pier and had been for about 12 years. I know Mr. Chisholm pretty well. He has not talked to me about this case, but I have told him about it and about this

(Testimony of Lawrence Brannan.)

conversation with Mr. Dave Powers. I do not know whether that was before or after Mr. Chisholm testified as a witness in this case; I think though it was before. Mr. Chisholm did not tell me to go to the attorneys on the other side and tell them about it. He gave me no advice about it. It was about a couple of months ago, I guess, that I told him about the conversation.

The conversation itself took place between half past nine and 10 o'clock in the morning. Officer Galloway came along while I was talking to Dave Powers. We had at that time been in conversation about a half a minute and we continued maybe a couple of minutes more. That was the last conversation I had with Dave Powers. Before that I had talked with him nearly every day, or as often as he passed along. I think that was about five months ago, and it was in the summer-time.

Q. Now, just give me the exact language that Dave Powers used on that occasion, as near as you can remember it?

A. Well, he came along and he says, "Hello, Larry, how is everything?" I said, "First rate, Dave. How is everything with you?" He said, "Oh, fine and dandy." He said, "Say, did you see the papers, to-day?" I said, "No, I didn't notice the papers to-day, why?" He said, "The papers are full of it." I said, "Full of what?" [1251—1189] He said, "About the Western Fuel," and he said something about McNab, but I really forget what he said about McNab. He was United States Attorney here at the



(Testimony of Lawrence Brannan.)

time. He said, "Why, there's nothing to it, Larry; this is dead easy, a cinch." I said, "Yes, is that so?" I said, "Bully for you." He said, "I am going to get 50,000 or 60,000 out of this before I am through." I said, "Is that so? Good boy." He said, "Why, you know that fellow back east that tipped off about weighing sugar? Look at the pile he got." I said I read something about it, but I really forget now. So he walked away then and didn't have any more to say on that question.

Q. Did you congratulate him on his good luck?

A. Why, sure I did; certainly I did, I told him to go to it.

Q. You told him to go to it?

A. Yes. Oh, by the way, I said, "I wish I could get rich that way." I said, "Dave, I wish I could get rich that way."

Q. And you told him that, did you?

A. Yes, sure.

Q. Was that in the presence of Galloway?

A. Yes, sir.

Q. What way did you mean, when you said you wished you could get rich that way?

A. That I could accumulate so much money as he was talking about.

Q. What way did you refer to when you said you told him you would like to get rich that way?

A. Well, it looked to me as though he thought he was going to get easy money.

Q. How did he say he was going to get easy money?

A. He had a dead cinch on this Government case.

(Testimony of Lawrence Brannan.)

Q. Did he say how much he would get?

A. That the Government would give it to him, like this fellow back east.

Q. That the government would give him which, the money, or the dead cinch?

A. I don't know, I don't understand just how it is, [1252—1190] a percentage, or something like that. He said there was about \$50,000 or \$60,000 in it for him.

Q. Did he say why he was to get the \$50,000 or \$60,000? A. No, he didn't say why.

Q. Did he say for what cause he was to get the \$50,000? A. No, sir.

Q. Did he say for what services he was to get the \$50,000 to \$60,000? A. No, sir.

Q. Or did he say what the consideration was by which he was to get the \$50,000 to \$60,000?

A. No, sir.

Q. Did you understand why he was to get the \$50,000 to \$60,000?

A. Well, it looked to me that he was so much interested in the Western Fuel cases, that that is the way he was to get it.

Q. Was he to get it as a dividend from the Western Fuel Company? A. Yes, a percentage.

Q. A dividend from the Western Fuel Company?

A. Yes, sir.

Q. Is that the way you understood it?

A. Well, no, not exactly. The way I understood it, the Government was trying to get so much money back, and he would get a percentage of so much that it got back.

(Testimony of Lawrence Brannan.)

Q. Did you understand that this case that is pending at this time, and the case that was pending at that time, was a case to get the money back for the Government?

A. I don't quite understand you.

Q. I say, did you understand that the case that was pending at that time, and the case that is pending at this time, is a case to get the money back on behalf of the Government?      A. Yes, sir.

\*            \*            \*            \*            \*            \*            \*

Mr. SULLIVAN.—Q. When you made the remark to him, "I wish I could get money that way," did you mean you would like to get the money in the same way that Dave Powers said he was going to get it?

A. Well, no, not exactly, but the way he spoke it looked [1253—1191] as though it was finding money, and I would like to find it, too.

Q. Now did you understand he was finding it?

A. Well, I couldn't explain that, exactly.

Q. Didn't he give you any explanation at all as to the circumstances under which he was to get the 50,000 or 60,000, or why he was to get it?

A. Well, it appears as though he was interested for the Government. I suppose that if the Government would gain anything that he would get his percentage of it. That is the only way I understood it.

Q. Why? Why was he to get any of it? Did he tell you?      A. No, he didn't tell me why.

Q. Did you understand why he was to get some of it?

A. Well, no, not exactly; that is the way I looked at it though.

(Testimony of Lawrence Brannan.)

Q. That is the way you looked at it?

A. Yes, sir.

Q. Did you have any conversation in relation to anything else besides that?

A. Not that day, no, sir.

Q. Not that day.

A. No, sir, I didn't see him at all that day again.

\* \* \* \*

Q. Did you, after the finding of the indictments of the Western Fuel Company, keep Dave Powers off the Pacific Mail dock?

\* \* \* \*

A. Well, now, I couldn't answer that; it was after he came out of prison that I was ordered to keep him off the dock.

Mr. SULLIVAN.—Q. That is about a year ago, is it not? A. Yes, sir, I think it is. [1254—1192]

\* \* \* \*

Mr. SULLIVAN.—Q. Did this conversation take place with Dave Powers after you had received the orders to keep Dave Powers off the dock?

\* \* \* \*

A. Long afterward.

“I could not say whether the conversation took place before the 20th of June, 1913. When Dave Powers asked me if I had seen the papers, I do not know that he referred to any particular paper; I suppose he meant just the daily papers. Shortly after this conversation with Dave Powers took place, I reported it; that is, I mentioned it to Mr. Chisholm. It was maybe a couple of days afterward.

(Testimony of Lawrence Brannan.)

I went in to my boss, Chief Whitman and told him what Powers had said. That was about two minutes after the conversation. I rushed right into Mr. Whitman's office and told him. Mr. Whitman is working for the Pacific Mail Steamship Company. I mentioned the conversation also to Mr. Chisholm, and I think I told my wife and son about it when I went home that night; about how rich Dave Powers was going to get.

Q. Did you refer to the conversation again afterward in any conversation that you had with Galloway; did you ever speak about the conversation after that day with Mr. Galloway, the officer?

A. Did I ever speak to him about it?

Q. Yes.

A. Yes, I spoke to him yesterday about it.

Q. Was that the first time you referred to the conversation since you had it last year?

A. Well, I think it is, to the best of my knowledge. I never paid no more attention to it.

Q. You were always friendly with Dave Powers up to that time, were [1255—1193] you not?

A. Yes, sir.

Q. And with his father and with his brother?

A. Yes, sir, and I am yet, too.

Q. You are still, are you? A. Yes, sir.

Q. Do you remember that Mr. Dave Powers was a witness against Donaldson, who was the assistant superintendent of the Mail Dock? A. Yes, sir.

Q. And you know that in a prosecution by the



(Testimony of Lawrence Brannan.)

United States against Donaldson, Mr. David Powers testified?

A. Yes, sir, I guess he did; I think he was the main witness..

Q. And didn't you and the other men employed by the Pacific Mail feel aggrieved because David Powers testified against the assistant superintendent for smuggling opium into this country?

Mr. STANLEY MOORE.—You ask him whether he personally felt aggrieved, as to whether he felt it?

Mr. SULLIVAN.—Yes.

A. Well, now, I never asked any of the men's opinions about it.

Q. Well, you felt aggrieved at him, did you not?

A. Well, no, not if he was in the right, I would not feel aggrieved at anybody if they were in the right and were telling the truth.

(At this point it was arranged by agreement of of counsel for the respective parties hereto and by order of the Court that the Court and jury should, on the following day, namely, on Thursday, January 29, 1914, view the premises of the Western Fuel Company, including the barges, Folsom Street bunkers, *et cetera*.) [1256—1194]

[**Testimony of John Thomas Linehan, for  
Defendants (Recalled).**]

JOHN THOMAS LINEHAN, on the resumption of his direct examination by Mr. Stanley Moore, testified as follows:

Q. Mr. Linehan, there was a question I wanted to ask you: With reference to the time that you saw Dave Powers on the street-car that night, do you recollect hearing any conversation concerning the case on that occasion?

A. Yes, Dave Powers spoke to me about it.

Q. Now, I will ask you this question: Will you state whether or not he said in that conversation that he was going to get J. B., and he was going to get the Jew, or he was was going to get that Jew, Mayer?

A. Yes, those are the very words he said.

Cross-examination by Mr. SULLIVAN.

Q. That was the second conversation you had with Dave Powers, was it?

A. That was the first conversation.

Q. The first conversation? A. Yes, sir.

Q. Where did you have the second conversation with him?

A. On Market Street, in front of the Emporium.

Q. When did that conversation take place?

A. Well, I should judge about a month later.

Q. About a month later? A. Yes, sir.

Q. And in that conversation, he made use of the very same expression, did he?

A. Well, he said he would make Jew Mayers sweat.

(Testimony of John Thomas Linehan.)

Q. He would make Jew Mayers sweat?

A. Yes, sir.

Q. Is not that the same expression he used on the first interview with you?      A. No, sir.

Q. What was the exact language said in the first interview?

A. He said he would get J. B. and the Jew Mayers.

Q. In your testimony given this morning, you said you met him on [1257—1195] Market Street one night and he said to you, I am going to make that Jew Mayers sweat; that is the fact, is it?

A. Yes, sir.

Q. Now, you didn't say this morning that you had any such conversation with him in the car, did you?      A. I was not asked that.

Q. Were you not asked that this morning?

A. No, sir.

Q. Are you positive as to that?      A. Yes, sir.

Q. Do you remember you said this morning that you were going home one night in the car and you met him in the car, about the middle of last year?

A. I was asked by counsel if Dave Powers said that he would make Jew Mayers sweat, and I said yes.

Mr. STANLEY MOORE.—He is right about that, Mr. Sullivan. I forgot to ask him about the conversation on the car. That is the reason I asked him the question this afternoon. I brought out from him that he met him on the car, and the conversation about making Jew Mayer sweat, he said occurred on Market Street, and my attention was

(Testimony of John Thomas Linehan.)

called to the fact that I had not asked him this morning about the conversation on the street-car—my attention was called to that after adjournment.

Mr. SULLIVAN.—Q. Did he say, “I’ll fix J. B. I’ll get that Jew Mayer,” was that his language?

A. Yes, sir.

Q. You know Joseph Desmond, don’t you?

A. Yes, sir.

Q. Were you present this morning in court when Joseph Desmond *testify* that he heard Dave Powers say in a conversation that he, Desmond, had with Dave Powers, and Powers said, “I’ll fix J. B., and I’ll get Jew Mayers”?

A. Was I present in court, do you say?

Q. I mean, were you present this morning when he testified in court to precisely the same language that you have just testified to?

A. I was not in court. [1258—1196]

Q. Have you seen Desmond during the noon hour, have you seen him during the recess? A. Yes, sir.

Q. And did you and Desmond talk about the testimony that each one of you had given? A. No, sir.

Q. Didn’t he tell you about testifying to having heard David Powers use this exact language on another occasion when Dave Powers said that to him, “I’ll fix J. B., and I’ll get that Jew, Mayer”?

A. No, sir, he did not.

Q. Can you explain to the jury how it is that you remember that Dave Powers used the precise language in the conversation he had with you that John Desmond says that Dave Powers used in the con-

(Testimony of John Thomas Linehan.)

versation with him, the very exact words, word for word?

A. We were sitting right close to one another, Dave Powers was right behind us—I can't say whether he was right behind us, or in front of us, but I was sitting right with Joe Desmond when he used those very same words.

Q. Were you with Joe Desmond that night?

A. Yes, sir, we were working that night.

Q. Did you go on the car that night with Joe Desmond?     A. Yes, sir.

Q. Where do you live?     A. 72 Albion Avenue.

Q. What car did you get on?

A. I got on the Mission Street car.

Q. Did both of you get on the Mission Street car?

A. Yes, sir.

Q. Where did you meet Powers that night? Was Powers on the car when you got on?     A. No, sir.

Q. Where did Powers get on the car?

A. I can't say for sure, but I think that it was at Third Street that he got on.

Q. You are positive it was a Mission Street car, are you? [1259—1197]     A. Yes, sir.

Q. Where do you say you were living at that time?

A. 72 Albion Avenue.

Q. Where is that?

A. That is between Valencia and Guerrero, 15th and 16th.

Q. And did you get off the car before Desmond got off the car?     A. Yes, sir.

Q. Where was Desmond living on that occasion?



(Testimony of John Thomas Linehan.)

A. He lived somewhere out in the Mission, I don't know where exactly.

Q. Did the three of you engage in conversation?

A. Well, I was talking with Joe Desmond when Dave Powers got on, and he slapped me on the back, and he said, "Hello, Jack"; then he says, "How is everything down in the Western Fuel?" I said, "All right." He said, "Are you working late to-night?" And I said, "Yes, a little." Then he mentioned, he said, "Is Jew Mayers scared?" I said I didn't know; he said, "Well, we will get J. B. and the Jew Mayers." That was his conversation.

Q. What else was said during the course of that conversation?

A. Well, I can't exactly say what was said; he was talking to Joe Desmond; I didn't pay much attention to what he said.

Q. Did he keep up a continuous conversation with Joe Desmond? A. Yes, sir, he did.

Q. From the time he boarded the car until you left it?

A. Yes, sir, he was talking with Joe Desmond.

Q. All the time.

A. Well, I can't say all the time, but those were the words he used.

Q. Did you mention that conversation which you had with Dave Powers to Mr. J. B. Smith the next day? A. No, sir.

Q. Or to Mr. Mayer?

A. I didn't tell him that, but I told him the sec-

(Testimony of John Thomas Linehan.)

ond conversation, because he asked me to tell him. [1260—1198]

Q. Who asked you to tell him?

A. Dave Powers.

Q. That is, the conversation you had on Market Street? A. Yes, sir.

Q. And you told Mr. Mayer the next day?

A. Yes, sir.

Q. What did you tell him?

A. I told him I saw Dave Powers and he told me to tell you he was going to get you, that he was going to make you sweat.

Q. How long ago did that conversation take place?

A. I guess somewhere about five or six months ago.

Q. Was it before or after Mr. McNab sent in his resignation as U. S. District Attorney?

A. I could not say, I don't know.

Q. Did you speak to anybody else since that about that conversation? A. No, sir, only to counsel.

Q. Only to counsel? A. Yes, sir.

Q. How long ago was that?

A. Several occasions.

Q. You went to his office on one occasion, did you not? A. Yes, sir.

Q. And you made a statement there?

A. Yes, sir.

Q. And did Mr. Desmond accompany you on that occasion? A. Yes, sir.

Q. In that statement which you made to Mr. Moore, you didn't tell Mr. Moore that Desmond was

(Testimony of John Thomas Linehan.)

with you that night, did you?      A. Yes, sir.

\*      \*      \*      \*      \*      \*      \*      \*

Q. You remember the fact that this morning when you were questioned by Mr. Moore, he did not bring out the fact from you that you and Desmond and Dave Powers were in the car when the conversation was alleged to have taken place?

A. He didn't mention about Desmond, but he asked about the conversation with Powers.

Q. When you went to Mr. Moore's office and made a statement some [1261—1199] time ago, did you tell him that you and Desmond were in the car with Powers together?      A. Yes, sir.

Q. And you and Desmond went to Mr. Moore's office at the time that you made the statement, did you?      A. Yes, sir.

Q. You say you have had several conversations with counsel; how many conversations did you have with counsel about this conversation?

A. He didn't ask me always about the conversation, he asked me about different things.

Q. How many conversations did you have with him concerning your testimony in the case?

A. Three or four.

Q. In each one of those conversations with counsel, did you not refer to the fact that Joe Desmond was with you on the night the conversation you say took place in the street-car with Desmond and Powers?

A. He never asked me that all the time; he asked me that maybe once or about twice, but that is all.

(Testimony of John Thomas Linehan.)

Q. How long ago was it you first mentioned to counsel that you had this conversation with Dave Powers and with Desmond?

A. I guess about a month ago.

Mr. Costello and I are still employed by the company. When I first went to work, and a number of times, I received instructions from Mr. Mayer never to overload the cars. Those instructions were given quite often and in such a loud voice that they could be heard all over the bunker. The weigher would not be present at the time when those instructions were given. He used to come on the platforms in the morning before the work started and sometimes at the noon hour, but during the actual process of weighing he was usually in the scales-house. There is a complete flooring or platform between the rails of the track upon which the cars are loaded. There are temporary platforms put down under the hoists where we load the cars. The platform is not continuous between the track and the southerly [1262—1200] side of the bunker; that is to say, the offshore side. There are platforms under the hoppers or towers. Between the towers the space is open at the present time. That has been the condition as long as I have been down there. Aside from the spaces under the hoppers the entire floor of the bunker was kept open. The inspector generally gets there before seven o'clock in the morning. He does not remain there all day, but I couldn't say exactly how long he does stay. The coal dropping into the cars makes considerable

(Testimony of John Thomas Linehan.)

noise, as does also the coal dropping from the cars upon the coal in the bunkers below. I couldn't say whether the last-named noise is as loud as the former or not. The sides of the cars are opened by pulling a side latch. It does not require much strength to do that. It is true that if the door were pulled open in the space between the hoppers, then, naturally, the coal would fall into the bunkers below, but we are not loading over that space. I guess the door could very easily be pulled open in that space if nobody was watching. I never received instructions to do that. The gate upon the chute leading from the hopper to the car is attached with a wire. There are two chutes to each hopper and those from which the coal drops into the cars are underneath the hopper. The gate comes down when it opens. It is opened with compressed air. It does not require very much strength to open that gate when you have the assistance of the compressed air to the amount of 80 pounds. It is easy to close the door if there is no jam or blocking of the gate by coal. You simply shut the handle off; the gate closes up, and there is a weight of about 300 or 400 pounds that closes it up. No compressed air is required in closing that gate. The compressed air is not working during the noon hour. When the power shuts off the compressed air drops right [1263—1201] away, but not completely. It commences to leave as soon as the "juice" is shut off. There is not enough compressed air left in the tank during the noon hour to open the gate. It is not



(Testimony of John Thomas Linehan.)

true that it takes over an hour for the compressed air to drop down to the point where it will not open the gate. By one o'clock the pressure is all gone. The engine-room is situated in the yard and the electric power comes from there.

I have quite often seen screenings deposited in barges without being weighed. On the other hand, I have seen them frequently weighed on the scales on the top floor of the bunker, but a good deal of the time they are not weighed. I have never seen the books kept by Mr. Mills in my life. I have not recently seen screenings deposited in the barges without being weighed, but I don't always run the screenings. Last year I, myself, ran some screenings into the barges without their being weighed. I don't remember exactly when, or the name of the barge. I know that I did that two or three times last year. I could not say whether I ran any unweighed screenings into the barges in 1912 or not. In answer to the question whether during the last eight years I have deposited screenings into a barge more than half a dozen times without their being weighed, I would say yes. I know that I have done so more than six times. In these cases the screenings were taken from the bin. I made a tally showing the cars that had been loaded and the cars that had not been weighed and made a report thereof to Mr. Mayer. I think they were about medium screenings; I don't know through what mesh they went. Sometimes, however, they were fine and sometimes very coarse.

(Testimony of John Thomas Linehan.)

Q. You have testified that if you opened your car in front of the car in charge of your companion, Costello, that it would interfere with the management of his car? A. Yes, sir. [1264—1202]

Q. Suppose he opened his door between the towers and dumped his coal into the bunkers below, that would not interfere with the progress of your car, would it?

A. They would know that something was the matter; Eddie Mayer would come out and want to know what was the matter, because he didn't make a certain trip on time; the trip is generally made always in a certain time, a certain time for the trip.

Q. That might happen where you had to hustle and get the cars on the scales very rapidly and back again; does it not very often happen that you are not put to a speed?

A. No, sir; if there are any delays there at all, Eddie Mayer comes down to see what is the matter, and the custom-house officer generally follows him down, too.

Q. When they are cleaning up a ship, you don't work fast, do you, when they are getting toward the end of the coal on a ship?

A. It comes up fast almost all the time. When they clean up a ship, we generally run our trains out of the way on the bunkers somewhere until they start in again.

**[Testimony of Thomas R. Stockett, for Defendants.]**

THOMAS R. STOCKETT, a witness called for the defendants and sworn, testified as follows:

Direct Examination by Mr. OLNEY.

I reside at Nanaimo, Vancouver Island, British Columbia, and am now, and have been since 1904, Manager or Superintendent of the operations of the Western Fuel Company at British Columbia. I am familiar with the properties of the Western Fuel Company on Vancouver Island which constitute practically all of the properties of said company that are in British Columbia. At the present time the Company has two mines in British Columbia: the No. 1 Mine and [1265—1203] the Northfield. The former is located in the City of Nanaimo and the latter on Departure Bay, about three miles north. In the past the Company also had No. 5 Mine and the Hairwood Mine. These last-named mines dumped and loaded their coal for shipment by water over the same wharf as is used for the coal from Nanaimo No. 1 Mine. The Northfield coal is loaded at the wharf on Departure Bay.

Q. Just state to the jury the location in a general way of the wharf and the loading dock at Nanaimo in connection with the No. 1 Mine or shaft?

A. The No. 1 Mine generally is located near the water's edge in the southern part of the town of Nanaimo and the wharf is about 3700 feet in a northerly direction. Right at the mine the water is not deep enough for the vessels to come; the deep water is out about 3700 feet in a northerly direction.

(Testimony of Thomas R. Stockett.)

Q. What is the location of the dock and the shaft at Northfield with respect to one another, and with respect to the water?

A. The Northfield mine is right close to the water's edge; there is a rocky bluff at the point, and the water is right deep; the dock and the wharf are right up close against the mine, right close to the shaft, a matter of probably 400 feet. The mine and the wharf buildings are practically one continuous building.

Q. What is the method of loading vessels at the No. 1 mine?

A. The coal is brought to the ship at the wharf from the mine in coal-cars, railroad cars; in passing from the mine to the wharf they pass the scale-house, which is located about 1580 feet below the mine, and it is weighed there, and after weighing is passed up to the wharf and dumped on to the vessels.

Q. Will you describe the method of weighing? You have stated [1266—1204] that the coal was in cars and that it was weighed at the coal-house; describe how the train is handled when the cars are being weighed?

A. The cars hold, generally speaking, about 5 tons, and we make up our train of about 100 tons; that would be 20 cars; they are brought from the mine by the locomotive and are backed on to the scale, one car being weighed at a time, and as each car is weighed it is pushed on down to a tare-track and the next car weighed, and so on until the whole train is weighed. When it is completely weighed it is drawn up to the

(Testimony of Thomas R. Stockett.)

scale again and over to the cross-over track and pushed by the locomotive again to the top of the wharf.

Q. Is the locomotive allowed on the scale?

A. No, sir, the locomotives are not allowed on the scale under any conditions.

Q. What is the method of loading at Northfield?

A. At the Northfield mine, on account of the location of the plant being so close to the water we don't have to use railroad cars and the coal after being prepared in the way of screening and cleaning, is taken by a conveyer to the top of the coal-bunkers and distributed through the bunkers, and when it is wanted for the ship it is drawn out from the underneath part of the bunker, the lower part of the bunker, to a second conveyer and conveyed out by a series of conveyers to the ship at the wharf; that is, when coal is taken from the bunkers, up into the bunkers, or taken out. When coal is taken direct from the mine there is a second conveyer that takes it direct to the wharf without passing through the bunkers. It cuts out the use of three conveyers if we send the coal direct to the ship from the mine.

Q. Have you got a plan here of the works at Northfield? A. Yes, sir. [1267—1205]

Q. Is the wharf shown on this diagram you have just shown me with reference to the other buildings?

A. Yes.

Q. Going back to this other plan which you handed me, what is that plan?

A. It is a general plan of the plant at the North-



(Testimony of Thomas R. Stockett.)

field mine, showing all the buildings and the wharf.

Mr. OLNEY.—I offer this in evidence, if the Court please.

(The diagram was here marked Defendants' Exhibit "X.")

Q. Now, referring to Defendants' Exhibit "X," which you have just identified, will you point out to the jury on this map where the pit-head or mouth of the shaft is?

A. Here is the pit-head, gentlemen; it is a vertical shaft, it is a vertical hole in the ground—the mine. The coal is brought up through here, the cages, a car at a time, and as it reaches the top it passes along the railroad track, which is on a high trestle here, around in here. Here is the tipping building. By the tipping building I mean the place where the coal is dumped and first enters the screen. In the other section I will show you, you will see the screen and what we call the picking-table below there; it drops first on a shaking-screen; that is a long screen that is mechanically operated. It has perforated holes in it, and the small coal is all riddled out; the small coal goes by a set of conveyers to another part of the building; the lump coal all goes on down past the picking-tables. A chute passes there. It is hand-picked and any foreign matter that may be in the coal, is taken out by hand labor. When the coal is to go to the bunkers it is passed on to one picking-table which operates in this direction and delivers the coal to a conveyer which takes it up at an angle of about 45 degrees to the bunkers, and it is dropped into the

(Testimony of Thomas R. Stockett.)

bunkers. When it is to go to the ship direct without going to the bunkers there is a second picking-table that runs out in this direction, and the [1268—1206] same process as to hand cleaning takes place. It meets a conveyer here which takes it to the loading-tower and from the loading-tower it is conveyed by an adjustable shift to the top of the ship, the opening hatch of the ship.

Q. Point out to the jury where the wharf is?

A. This is the wharf. This plan does not show the shoreline; the other one does. The shoreline is right in here between the building marked "wharf" and the building marked "picking-table" and the rope-house. The edge of the shoreline is just about there. This is a trestle leading over to the water. The other buildings are the power-house and the boiler-house and the engine-house and the machine-shop and the fans and the stables and the stores, and so on.

Q. What is the approximate distance between the tipping building and the wharf?

A. About 100 or 125 feet.

Q. Referring to the other map or drawing which you have there, I would ask you if this is a correct diagram of the conveyers in use at the Northfield mine? A. It is.

Mr. OLNEY.—I offer this in evidence and ask to have it marked Defendants' Exhibit "Y."

(The document was here marked Defendants' Exhibit "Y.")

Q. Is this looking at the works horizontally or looking at them vertically?

(Testimony of Thomas R. Stockett.)

A. This one here is vertically and and this one here is horizontal. This plan up here is the horizontal plan, and this is the vertical cross-section, just as if it were cut down through the works; it gives a clear understanding of the screenings and the picking-tables and the works.

Q. Will you point out to the jury where the tipple-house is? A. It is right here (indicating).

Q. Now, follow the coal from the tipple-house right through, [1269—1207] first into the bunkers, and then into the ship; first, I will ask you, what is the tipple-house?

A. The tipple-house is where the coal is dumped after it comes from the shaft; it is the first part of the preparing plant.

Q. That is, the first handling of the coal?

A. Yes, sir, the first handling of the coal after it reaches the preparation plant. These two circular rings represent the dump; that is a revolving dump; that little figure there represents the car as it comes from the mine; when the brake is released here the weight of the coal in the car bears this ring around, that is, turns it around, it is just like a squirrel-cage, the coal is deposited on this chute by gravity. The whole thing is done by gravity. There is no mechanical machinery there excepting a brake to stop it. Then it passes to the shaker-screen. The shaker-screen is an incline-screen like that, working by machinery back and forth. The floor of it is of sheet-iron, and it has perforated holes in it of different sizes, according to the different size coal you

(Testimony of Thomas R. Stockett.)

want to make. As this works back and forth, the small coal is all screened out, it is riddled out and it passes off to a set of conveyers to a plant where it is washed. The lump coal passes on down and comes over here on to this little arrangement here; and when the coal is to go to the bunkers this movable chute or an apex-chute, it is an apex on wheels and you can move it back and forth from one table to the other. When you want it to go go to the bunker this chute is moved this way and this coal passes down to the picking-table. As it goes to the picking-table there are men standing there on either side picking out the refuse matter. The good clean coal passes on to this conveyer, and it is taken up at an angle of 45 degrees to the top of the bunkers. That [1270—1208] conveyer runs along the bunkers some 200 feet or more, and the coal is passed into the bunkers through little gates and as this part of the bunker is filled up the gates are closed, and so on, until finally they are all filled.

Mr. SULLIVAN.—Q. Are those pockets?

A. No. It is all one continuous open bunker. These are heavy timbers here on the side to support it.

Q. They are simply supports? A. Yes, sir.

Q. Without partitions?

A. Since this was built we put in two small partitions on this end for small coal, one for nut coal and the other for pea coal.

Mr. ROCHE.—Q. Out of what material is that conveyer made that brings the coal over to the bunk-

(Testimony of Thomas R. Stockett.)

ers?     A. Iron and steel.

Q. It is a sort of a continual process, is it?

A. Yes, an endless chain. From this point here to that point there it keeps working around and around all the time.

Q. How wide is it?

A.  $3\frac{1}{2}$  feet wide, I think. The picking-tables are 4 feet 6. I think that conveyer is about 3 feet 6; it might possibly be 4 feet.

Mr. OLNEY.—Q. When the conveyer is in operation how do you regulate the discharge of the coal in any particular part of the bunker?

A. There is always a man up here, when this is working, to look after this part of the bunker.

Q. You have a series of gates there on top, have you?     A. Yes, sir, a series of gates.

Q. How many gates?

A. There must be 40 or 50. As one section of the bunker fills up he closes that gate; they are all open when he starts, but as they fill up he closes the gate.

Q. When the gate is closed does not that partition off the coal in a certain part of the bunker?

A. No. [1271—1209]

Q. Why do you have gates there if you have not partitions in the bunkers?

A. It is to save the breakage of the coal after it gets into the bunkers. After you get the natural inclination of the coal, the natural pile as it goes in there we have these gates here about every 4 feet and as one section fills up—not exactly a section, but as one tier fills itself up—



(Testimony of Thomas R. Stockett.)

Q. (Intg.) There is always a slant there, is there not?

A. Yes, sir, always a slant; the coal is always on that sort of a slant, of about  $1\frac{1}{2}$  to one.

Q. As I understand you, you have a long bunker running along this way and gates in the top about every 4 feet? A. Yes, sir.

Q. You get the coal started at the end of the bunker nearest the tippie-house? A. Yes, sir.

Q. And it lies there in the bunker on a slant?

A. Yes, sir.

Q. And as the coal comes in they take the next gate and the coal simply runs down on this slope?

A. Yes, sir, and it keeps running down on the slope until the bunker is filled.

Mr. STANLEY MOORE.—Q. What causes the coal to leave the conveyer and discharge itself through a particular gate?

A. It drops perpendicularly itself. The hole is right there; when the conveyer comes along the coal simply disappears.

Mr. McCUTCHEN.—Q. That is, it drops off the end of it?

A. This conveyer is made out of iron flights, maybe 2 or  $2\frac{1}{2}$  feet apart, with a chain on either side; about 3 or 4 feet ahead there is another flight, and so on. The coal is just sliding along. The conveyer is all an iron lined chute and it is dragging the coal along this incline chute. Whenever it comes to one of these gates that are open there is a perpendicular hole, and it drops right down.

(Testimony of Thomas R. Stockett.)

Q. What is a flight?

A. A flight is a piece of iron on the conveyer, [1272—1210] with a chain on either side.

Juror MAHER.—It is something in the nature of a scraper, isn't it?

A. Something on that order.

Q. In other words, it is just like a ladder, is it not?

A. Yes, almost like a ladder.

A JUROR.—Q. You might call them cleats, I think.

A. Yes; you might call them cleats, the manufacturers call them flights.

Mr. OLNEY.—Q. You have seen these canvas belts, have you, where the belt itself goes up and acts as a conveyer? A. Yes.

Q. And they dump on the end? A. Yes, sir.

Q. What is the difference between that arrangement and this one?

A. Oh, that is totally different; that sort of a conveyer only conveys at one point—that is, to distribute it. This one will distribute it at any place where you make a gate or a break.

Mr. SULLIVAN.—Q. It is just like a moving ladder, I guess? A. Yes.

Q. And as soon as a space opens at a certain part of the bunker the coal drops down?

A. Yes, sir.

A JUROR.—Q. And there is a platform under the whole length of the conveyer, is there? A. Yes.

Mr. ROCHE.—Q. And that platform really constitutes the top of the bunker? A. Yes, sir.

(Testimony of Thomas R. Stockett.)

Mr. OLNEY.—Q. After the coal is in the bunker, Mr. Stockett will you describe how it is taken out of the bunker and put in the vessel?

A. Under the bunker, the full length of the bunker there is a pan-conveyer. That is a different type of conveyer, that only discharges at one point. It is something in the order of the belt-conveyer, but it is made out of iron [1273—1211] pans. That runs all the way underneath the bunker, and underneath the screening plant and everything, and out to this point here, where there is a return-wheel, and the conveyer turns around and comes back and distributes the coal on to this conveyer here, which is exactly the same type of a conveyer, a pan-conveyer, but the break is made here on account of the long length of it, it is too long a length; from that point it is conveyed by this conveyer up an incline about like that, to the top of a tower where it is dropped over the end of this conveyer into the tower and then on that tower, which is about 35 or 40 feet high—

Q. (Intg.) Where is that tower located?

A. It is located on the wharf right close to the vessel, right on the face of the wharf.

Q. In other words, between what is marked picking-table on here, and the top of the tower the coal is passed over the shoreline and on to the wharf; is that correct?

A. Yes; and this loading-tower is right on the face of the wharf, as close up to the ship as it is possible to put it. It is a perpendicular tower, and in this tower there is an adjustable pan that is movable up and down to suit the tides or the height of the vessel.

(Testimony of Thomas R. Stockett.)

On this tower is also a movable conveyer which takes the coal from this tower right out over the hatch of the vessel and drops it into the vessel. That conveyer there at the face of the wharf can be raised up or down a distance of about 35 or 40 feet to suit the tide, or to suit the vessel; and in addition to that the rear end can be fixed at any point you want to have it, and the front end can be raised or lowered to help in loading the vessel. That has a pan-conveyer on it and that carries the coal either up the hill, or level, or down the hill, and drops it into the vessel. [1274—1212]

Q. The final result is you get a loading tower on the wharf to which the coal is brought by a conveyer, it is dropped by means of this pan-conveyer, as you call it, right into the hold of the ship?

A. Yes, sir, it goes right into the hold of the ship from the loading-tower.

A JUROR.—Q. Those pans are on belts, are they?

A. They are iron chains on either side, with little rollers or wheels about 3 or 4 inches in diameter about every foot or maybe every 9 inches; that runs along on a little railroad track and the pans are suspended between.

Q. How much will they hold?

A. It is a continuous pan; one laps over the other. The pans are probably about that wide and probably that deep; about 8 or 9 inches wide and about 6 inches deep. You don't fill each pan at a time; as the coal flows into them they make a continuous flow of coal. They are made in that shape in order to turn on the

(Testimony of Thomas R. Stockett.)

return end around the sprocket-wheel.

Mr. OLNEY.—Q. Is it possible to send the coal direct from the picking-screens into the ships without passing through the bunkers? A. Yes, sir.

Q. How is that done?

A. The coal, as I described getting to the end of the shaker-screen, this movable apex-chute is moved back that way and the coal slides to a second picking-table, a picking-table that comes out to the wharf, and the same process takes place there of cleaning the coal. By the time the coal gets out here it is already cleaned, and it is deposited on to this conveyer which runs up to the wharf-tower; so that when we are loading coal direct from the mine to the ship it does away with the use of three conveyers, and sends it direct to the ship without sending it to the bunkers.

[1275—1213]

Q. That is, it is possible to send the coal directly from the screening-tables into the ship by a much more direct method than sending it through the bunkers? A. Yes, sir.

Q. What is the method of weighing at Northfield?

A. This is the plan of that.

Q. Before going into this map which you have already shown me, suppose you refer to the blue-print you had last, Defendants' Exhibit "Y." Point out to the jury on Exhibit "Y" how the coal is weighed at Northfield?

A. I think I can show it better on the other plan, because this is a very small scale.

Q. Will you point out the place where the weighing is done?



(Testimony of Thomas R. Stockett.)

A. Underneath the bunkers there is a railroad track, right over the top of this conveyer, and on that railroad track are two weighing-hoppers, great big double-size sheet-iron cars practically, with a weighing attachment in connection with it, and these cars or weighing hoppers, as we call them, move back and forth to whichever part of the bunker you want to take the coal out; they hold about 5 tons. As they are filled up and before they are allowed to pass on to the conveyer there is a dial there which shows the weight; and when the car is full the weight is taken; there is a little door at the bottom that is opened, and the coal slides on to the conveyer. Those hoppers have, as I say, a railroad track and move to the full length of the bunkers, any pocket you want to take the coal out of. That railroad track is about on this line here—I am not quite sure that is the right place, but it is about there.

Q. You are pointing to a line above the conveyer?

A. Yes, and the conveyer-chute sticks down in this shape and drops the coal on to the conveyer. [1276—1214]

Q. The bunkers have gates in them.

A. The bunkers have gates on either side, at regular intervals, the full length.

Mr. SULLIVAN.—Q. On the side, too?

A. On either side.

Mr. ROCHE.—Q. Is it a fact that all of the coal that finally finds its way upon that lower conveyer is first weighed in these hopper-scales?

(Testimony of Thomas R. Stockett.)

Mr. OLNEY.—We will come to that in a minute, Mr. Roche.

Q. And this weighing-hopper is a great big bin or car on wheels, which you can move under any one of these gates? A. Yes, sir.

Q. And after the coal has been dropped into this hopper and weighed there is then a chute by which it is dropped on to the belt-conveyer that takes it out to the wharf?

A. On to the pan-conveyer which takes it out to the wharf.

Q. I will ask you if this is a plan of the weighing-hopper?

A. And the bunkers, yes. This is the detail plan.

Mr. OLNEY.—I will ask that this be marked Defendants' Exhibit "Z."

(The diagram was here marked Defendants' Exhibit "Z.")

The WITNESS.—This is a large scale plan of the bunker and a cross-section particularly and a full-length section with a piece cut out. This is where the flight-conveyer comes up from the picking-table and it makes this angle here and then runs along the full length. Right here, for instance, is the first little chute; the coal is right here; the coal drops down and it fills the bottom of the bunker; and then as this is filled that gate is closed; then it fills up in this section.

Q. Is that a chute or is that timber?

A. That is the timber.

Q. That is not a chute.

(Testimony of Thomas R. Stockett.)

A. No, that is not a chute. This is [1277—1215] the beginning of the bunker near the picking-table and this is the far end over here. All along here is where the pathway is, you might call it, it is lined with sheet-iron and has the little gates in it about every 4 feet. This shows the timber structure. Here is the flight from there as it passes along. Here is the size and the shape of the flight. That pulls that coal along, and it is dropped through the gates into this bunker. The bottom of the bunker has this shape.

Mr. ROCHE.—Q. Like the shape of an inverted “V”?

The WITNESS.—And here are the gates where the coal comes out of the bunker, one on this side and one on that side. Here is the cross-section of that weighing-hopper; here is the railroad track on which it runs on either side. Here is the footpath for the man to stand on when he operates it. Here is the upper side of the pan-conveyer and here is the lower side. As the coal is wanted in the hopper these little levers are manipulated and the gate opened and the coal forced in from either side, or from both sides, the gates being opposite each other. When this hopper is full these gates are closed and the weight is taken.

Mr. SULLIVAN.—Q. Where is it taken?

A. The weight is taken right on the carriage. The hopper is a suspended weighing-box. The weight is taken automatically. There is a dial there with a hand on it that goes around to the weight,

(Testimony of Thomas R. Stockett.)

whatever it may be. When that is all done the gate is opened and the coal is passed on to the conveyer.

A JUROR.—Q. How long does it take for the conveyer to empty the hopper of the five tons?

A. A great deal depends on the speed with which you operate the conveyer. If you run it fast here it will not take so much time.

Q. Is that arranged with a variable speed?

A. Yes, sir. There [1278—1216] is a man sits right at the engine, and we have little button-bells from the wharf to the conveyer, and he regulates the speed according to the signals he gets.

A JUROR.—Q. Suppose they are running it full speed, how long would it take to empty it of the five tons?

A. It is hard to say just in how many seconds or how many minutes, it flows right out.

Q. Just a few minutes?

A. Yes. If the coal is fine coal it will run out faster than if it is coarse. Sometimes it gets blocked in there, and you have to get it out with bars.

Mr. SULLIVAN.—Q. With ordinary speed how much coal could you put into the ship in an hour?

A. I should say that running the two hoppers you could put in 200 tons an hour.

Mr. ROCHE.—Q. Do you fill one of the weighing-boxes while the other one is being worked?

A. Usually.

Mr. OLNEY.—Q. Have you a drawing of that weighing-hopper? A. Yes, sir.

(Testimony of Thomas R. Stockett.)

Q. Is this it (pointing)?      A. Yes, sir.

Mr. OLNEY.—I will ask to have this marked as an exhibit.

The diagram was here marked Defendants' Exhibit "A.")

The WITNESS.—This is looking at the other side. Here are the wheels of the carriage. Here you see them again. This moves back and forth, wherever you want to load it from. The coal is dropped from the chutes into here. There is a gate manipulated here, a little hinge-gate that comes up in this direction, and it is operated here by a hand-wheel, with a rope to it. When the hopper is full and the weight is taken by this little dial here this chute is lowered down and the coal flows on to the conveyor. When the coal is out this gate is lifted up again [1279—1217] just enough to stop the coal from flowing out. Here it is in that position there, that dotted line shows where it is filled up, and to keep the next load of coal from flowing out; when you want to empty the hopper you drop that down perpendicularly to the angle at which you want the coal to run out.

A JUROR.—Q. The dial shows the actual weight of the coal.

A. The dial shows the actual weight of the coal. The door is right here in front of the platform where a man stands. It is a regular Fairbanks Scale arrangement, what they call a Hopper Scale.

A JUROR.—Q. About how wide is the opening on that?      A. That is 36 inches in width.



(Testimony of Thomas R. Stockett.)

Q. What would be the size of the opening?

A. Two feet six; it is marked there "2 foot 6 opening." That is to let the big lumps out. Even at times with that opening it binds itself and you have to go in and work them loose.

Q. What is the size of the pans on the conveyer?

A. About 5 feet; from  $4\frac{1}{2}$  to 5 feet in width; they are wider than this chute that comes down from the hopper. I know that the chute has a little play on either side; my recollection is that it is  $4\frac{1}{2}$  to 5 feet in width.

Mr. OLNEY.—Q. Is this method of weighing that you have described to the jury the only method of weighing pursued at Northfield? A. Yes, sir.

Q. And that is the only method that has been pursued since you have been there? A. Yes, sir.

Q. Is there any method of loading coal from the bunkers at Northfield without weighing?

A. Yes, sir.

Q. How is that done?

A. It is done through what we call an easement-chute, which does away with the use of the hopper and [1280—1218] the weighing-scale.

Q. Have you a drawing of the easement-chute here? A. Yes, sir.

Q. Is this the drawing which you hold in your hand? A. Yes, sir.

Mr. OLNEY.—I offer this in evidence as Defendants' Exhibit "BB."

(The diagram was here marked Defendants' Exhibit "BB.")

(Testimony of Thomas R. Stockett.)

Q. Will you describe to the jury just how this easement-chute works?

A. Will I give the reason for the installation of it?

Q. Yes, give the reason for the installation of it.

A. In the handling of the coal through that weighing-hopper we found that on account of the vertical drop from the bottom of the gates in the bunker to the bottom of this hopper there was a considerable breakage in the coal. To start with, there would be a vertical drop of about 7 feet or thereabouts, and as the hopper filled it of course got less, but there was a perceptible and continuous breakage of coal through this weighing-hopper. In order to eliminate that breakage, we devised the idea of what we call an easement-chute in order to pass the coal right from the mouth of the gates of the bunker down on to the conveyer without any perpendicular drop; in other words, wiping out entirely the perpendicular drop. To do that we devised an arrangement that is shown on this plan which in our parlance is called an easement-chute. We use the same railroad track that the weighing-hoppers run on; instead of two wheels we have a truck with three wheels on—that is because of the length; the easement-chute goes right up to the mouth of the gates from the bottom of the bunker; so that right along there would be the bottom of the gate; there is only about an inch play or freedom there. Instead of coal dropping right down to here, as it does in the weighing-hoppers, it simply drops [1281—1219] on to this incline and passes on down right here to the conveyor; the con-

(Testimony of Thomas R. Stockett.)

voyer runs right on this spout here. In order to further do away with breakage, instead of letting the first of that coal get a long run in the chute down here like out of a cannon, we have a little gate here which is operated by the man who stands here, with a hand-lever; he pulls that gate up and that checks the coal, so that the rough handling of the coal is only on the first portion which comes from there to here; he does not permit the coal to pass below this point faster than it is coming in from the hopper above, from the gates of the bunker; if he finds there is an interruption from a blockage of the gate, or from any other cause, he immediately operates the lever and stops the coal coming and only this little bit flows on down. This was the result of considerable experiments and had been found to be a great success.

Q. Is that adjustable?

A. It is to the extent of 24 degrees. We found that that was a good average pitch for that coal to start to run itself on.

Q. And that is lined with iron?

A. Yes; practically the whole thing is iron except the main timbers. And that also runs the full length of the bunkers.

Q. What do you mean by running the full length of the bunkers?

A. This track which carries the easement-chute can be pushed along under the full length of the bunkers, just the same as the weighing-hoppers. You can place it under any gate or under any por-

(Testimony of Thomas R. Stockett.)

tion of the bunker you want to. [1282—1220]

(At this point, and, namely, on Thursday, January 29, 1914, the Court and Jury visited the premises of the defendant, Western Fuel Company, including the bunkers, barges, etc., on the San Francisco waterfront, and witnessed, among other things, the discharge by buckets of coal intended for fuel purposes from a barge into an American registered vessel.)

Mr. OLNEY.—Q. \* \* \* Now, just what was the purpose of this easement-chute with relation to these weighing-hoppers?

A. The easement-chute was to take the place of the weigh-hoppers for the purpose of avoiding the breaking of the coal in passing the coal from the bunkers to the conveyers that carry the coal to the ship.

Q. In other words, when the easement-chute was used the coal would not be weighed?

A. The coal was not weighed; it was passed directly from the bunkers to the conveyors.

Q. When was this easement-chute installed?

A. It was installed in the latter part of February and the first part of March, 1906; the first day that it was used was in loading a ship on March 16, 1906.

Q. Have you used it since?

A. We have used it in all cases of shipments of coal to the company at San Francisco since that time.

Q. Now, did this easement-chute have any other advantages besides the prevention of the breakage of coal? A. Yes.

(Testimony of Thomas R. Stockett.)

Q. What were they?

A. It reduced the time of passing the coal from the bunkers to the conveyor by practically one-half, and it followed that it reduced the time of putting the coal on board the ship about one-half; in other words, it cut the course of loading coal from the bunkers to the ship right in two, and it started the ship off within about half the time that it would [1283—1221] have taken otherwise; both of those were quite important items.

Q. Now, to what extent has this practice of using the easement-chute and not weighing the coal loaded at Northfield for San Francisco been followed since the installation of this easement-chute?

A. It has been invariably used in the passing of coal from the bunkers to the ship since that time.

Q. Now, has this practice applied to whole cargoes, or partial cargoes from Northfield to San Francisco, or to all coal, whether it was part cargo or the whole cargo?

A. All the coal whether whole cargo or part cargo.

Q. Why was not a similar practice in regard to weighing followed at No. 1 Mine?

A. There was no need to follow that custom or practice at No. 1 Mine, because the coal was in cars, or if it was in the bunkers it was necessary to put it in the cars before it could be passed to the ship, and the speed of loading ships at No. 1 was considerably larger than at the Northfield Mine under the old system; in other words, to dump them into the ship as fast as the ship could take them at No. 1.



(Testimony of Thomas R. Stockett.)

Coal loaded at Nanaimo for points other than San Francisco was weighed because it was necessary to know the exact amount in order to make out the proper bills and charges. It was not necessary in the case of coal sent to San Francisco because that coal was going to different departments of the same coal company, and the advantage of loading it without breakage was quite material. In the absence of weighing, the coal weights from Northfield were obtained by estimates which were generally made by the draught of the boat. Cargo boats have what they call a ship's scale which means so many tons per inch of draught. The draught of a boat would be taken on arrival and then again when we were through loading the boat, [1284—1222] and the quantity would be estimated from the ship's scale and arrived at as closely as we could in that way.

The first vessel which took coal from Northfield after this practice of weighing went into effect was the Norwegian Steamer "Turge Viking." At that time I received a report from the wharf-master, or a person occupying an equivalent position, in regard to loading this vessel. That is the report which is now shown me. (This report antedating the shipments of coal referred to in U. S. Exhibit No. 125, Table A, and counsel for the Government objecting to its introduction in evidence on this ground, it was arranged that the introduction of this document should be deferred so as to give counsel for the Government an opportunity to compare its figures with the corresponding entry in the United States

(Testimony of Thomas R. Stockett.)

custom-house books. Counsel for the Government having done so and having admitted that the bill of lading or invoice figures in the custom-house books with reference to that shipment were the same as the figures contained in the report to be introduced in evidence, the following proceedings ensued:

Mr. OLNEY.—Now, I renew the offer of this report in evidence.

Mr. ROCHE.—Of course, neither the bill of lading nor the invoice so far as that particular boat is concerned have been introduced in evidence. We renew the objection heretofore made by us when the offer was heretofore made.

The COURT.—The objection is overruled. The document is admitted not for the purpose of showing the correctness of the weights there, but for the purpose of showing the method of arriving at them.

Mr. OLNEY.—Yes, sir; that is the only purpose for which we put it in. It reads as follows: [1285—1223]

**[Defendants' Exhibit "CC"—Loading Report of  
S. S. "Torje Viken."]**

S. S. "Torje Viken," 18 March, 1906.

Loading Report.

Arrd Nan	11.00 A. M.	13th Mch-06
Docked	11.10	"
Ready	12.00	"
Began	12.15	"
Finished	9.00 P. M.	15th "
Sailed for Nfd	6.15 A. M.	16th "

Ships Draft Fwd. 23' 8"

Aft. 23.11

---

Mean 23' 9½"

Cargo.

Nanaimo	3618.4	Hause
Northfield	2241.16	"

---

Weighed in	5860. 0	
Ships Bunker	210. 0)	Estimate of Coal on
Hold	95. 0)	board on arrival
Fresh Water	60. 0)	and F. W. in boilers etc.

---

D. W.	6225. 0
-------	---------

---

Coal not weighed at Northfield.

Reckoning of Cargo taken from a D. W. of 6110 tons on a Mean Draft. 23'6"

Filled ship papers 100 tons less than weighed in or 5760 tons.

(Signed) WM. COUNDLEY.

(Testimony of Thomas R. Stockett.)

Q. What does "D. W." stand for?

A. Dead weight.

Q. What does "F. W." stand for?

A. Fresh water.

(The document was marked Defendant's Exhibit "CC.") [1286—1224]

Q. I notice on here that there is an item of 95 tons in the hold, and it says, "Estimate of coal on board"; was it or was it not frequent for vessels to return from San Francisco to Nanaimo with some coal left in the hold? A. Yes, sir.

Q. Was the same practice followed in all of the other cargoes from Northfield, Mr. Stockett, as is represented by this report? A. Yes, sir.

\* \* \* \* \*

Q. Who was Coundley?

A. Coundley was the wharfinger; he had charge of the dispatching of ships.

I have prepared a statement of all the cargoes loaded from the No. 1 shaft or Northfield for San Francisco from April, 1906, when the practice I have heretofore referred to in making estimates on the cargoes went into effect, to December 31, 1912. That is the table which is now shown me and is prepared from the records of the Nanaimo office which are the original records from which the estimated weights or actual weights on the bills of lading and invoices were made up. That list includes all of the San Francisco cargoes from Nanaimo during the period specified. Referring to this table, in 1906, the total number of cargoes loaded and shipped were

(Testimony of Thomas R. Stockett.)

25; 9 of these came from No. 1 alone and 16 came, either in whole or in part, from Northfield. In 1907 there was a total of 25 cargoes shipped of which 3 were loaded exclusively at No. 1 Mine and 22, in whole or in part, at the Northfield Mine. In 1908 there was a total of 12 cargoes, 1 loaded exclusively at the No. 1 Mine and 11, in whole or in part, at Northfield. In 1909 there was a total of 24 cargoes, 1 loaded exclusively at No. 1 Mine and 23, in whole or in part, at Northfield Mine. In 1910 there was a [1287—1225] total of 20 cargoes, of which the entire number were loaded, in whole or in part, at Northfield Mine, some (none?) being loaded at No. 1 Mine exclusively. In 1911 there was a total of 27 cargoes, one loaded exclusively at No. 1 Mine and 26, in whole or in part, at Northfield Mine. In 1912 there was a total of 33 cargoes, one loaded exclusively at No. 1 Mine and 32 in whole or in part at Northfield Mine. For the entire period of seven years from 1906 to 1912 inclusive, there was a total of 166 cargoes loaded and shipped, 16 exclusively at No. 1 Mine and 150, in whole or in part, at the Northfield Mine, 91% therefore being loaded, in whole or in part, at the latter mine and 9% exclusively at No. 1 Mine. The weights of the cargoes loaded at No. 1 Mine were the actual scale weights, not estimated weights. The weights of the cargoes loaded in whole or in part at Northfield were estimated weights throughout the time covered by this statement.

Q. Has it been the practice of the Nanaimo office at any time to make a deduction from what I may call



(Testimony of Thomas R. Stockett.)

the loading weights in order to get the bill of lading weight?     A. Yes, sir.

Q. Will you state the history of that practice and the reason for it?

A. When we began the estimation of the boats—of the coal—loaded at Northfield Mine on March 16, 1906, we started a practice of making the bill of lading weights on large cargoes 100 tons and on small cargoes 50 tons less than our estimated weight, doing that for the purpose of being on the safe side, knowing that the estimate was subject to so many conditions of variation that it was impossible to get at it accurately; and the system of making this deduction was done for the purpose of safety, being on the safe side, not over-estimating. That [1288—1226] practice continued until November, 1907.

Q. What took place then?

A. Beginning with the cargo loaded November 16th, I think it was, 1907, we ceased making any difference between the estimated weight and the bill of lading weight. That continued until September, 1907—

Q. (Intg.) November, 1907?

A. No, it was September, 1908. In September, 1908, we re-introduced the custom of making a deduction between the estimated and the bill of lading weight, and instead of fixing it an even tonnage we made it on the basis of 3 per cent. That continued until June, 1909, at which time we started the custom or practice of making the deduction of one per cent between the estimated weights and the bill of lading

(Testimony of Thomas R. Stockett.)

weights; that practice has continued up to the present time.

Q. You stated that up until November, 1907, you made a deduction of 100 tons on large vessels and 50 tons on small ones, and in September discontinued that practice; and in September, 1908, you resumed the practice of making a deduction that way but made the deduction simply 3 per cent; what took place at that time which led to the resumption of this practice of making a deduction; that is, in September, 1908? A. We were over-estimating the cargoes.

Q. Did anyone take the matter up with you? How did it come up?

A. It came up—no, I don't recall that anybody took that up with me particularly as to the making of that deduction, but I was told that we were over-estimating, that the cargoes were running short, and that our estimates must be carelessly made or must be wrong.

Q. Did you have any discussion with anybody about it?

A. Mr. Howard was up there in August of that year, and the probabilities are that the matter was discussed with him. [1289—1227]

Q. Have you completed your answer in regard to the reasons for resuming the deduction in September, 1908?

A. Further than that he told me to be particularly careful in the estimates. Knowing that the tendency of employees around the wharves would be to over-estimate I took the position of making the deduction

(Testimony of Thomas R. Stockett.)

3 per cent so as to be sure of being on the safe side.

Q. Why did you drop back to one per cent subsequently?

A. I received a communication from the Secretary of the company instructing me—

Mr. ROCHE.—Just a minute. We object to the witness testifying concerning the contents of the communication unless the communication itself is produced.

Mr. OLNEY.—Q. Have you that communication?

A. I have, sir.

Q. Will you produce it? Is that the communication which you hold in your hand? A. Yes, sir.

Mr. OLNEY.—We offer this in evidence and ask to have it marked Defendants' Exhibit "DD."

Mr. ROCHE.—No objection to that letter going in.

Mr. OLNEY.—I will read the letter, gentlemen of the jury. It is dated at San Francisco, on the letter-paper of the Western Fuel Company, dated July 9, 1909, and reads as follows:

**[Defendant's Exhibit "DD"—Letter, Dated July 9, 1909, from D. C. Norcross to Western Fuel Company.]**

"San Francisco, July 9, 1909.

Western Fuel Company,

Nanaimo, B. C.

Dear Sirs:

Regarding the billing of coal under the actual weight, in the past you have been deducting three per cent from the actual. Hereafter, you will reduce this to one per cent as there does not seem to be any

(Testimony of Thomas R. Stockett.)

necessity [1290—1228] for such a heavy allowance. On the last six cargoes received the actual weight was 36,347 tons, turned out 35,882 tons, a shortage slightly over one per cent.

Yours truly,

D. C. NORCROSS,

Secretary.”

The list or statement to which I have heretofore referred, prepared by me shows the loading weights of the various cargoes during the period specified and the bill-of-lading weights. It also shows the proportion of the cargoes loaded at the No. 1 Mine and the proportion estimated to be loaded at the Northfield Mine.

(Said table or statement was here introduced in evidence as Defendants' Exhibit “EE,” and is in words and figures as follows:) [1291—1229]

**[Defendants' Exhibit "EE"—List Showing Loading Weights of Various Cargoes.]**

**SHIPMENTS FROM NANAIMO, B. C., TO SAN FRANCISCO.**

	Name of Vessel	Loaded at		Totals. Bill Lading and Inv.
		No. 1 Mine.	Northfield Estimated	
1906.				
Apr. 4.	Terje Viken		2,425	2,425 2,325
7.	Reidar	3,717		3,717 3,617
12.	Titania	3,327	2,481	5,808 5,708
18.	Terje Viken	4,005	19	4,024 3,924
May 8.	Titania	4,556	1,244	5,800 5,700
11.	Tellus	1,992	1,696	3,688 3,588
26.	Titania	2,818	3,042	5,860 5,760
June 5.	Terje Viken	2,846	3,050	5,896 5,796
16.	Titania	3,818	2,072	5,890 5,790
July 6.	Titania	5,655		5,655 5,655
20.	Terje Viken	3,567	2,233	5,800 5,700
Aug. 5.	Terje Viken	5,685		5,685 5,685
13.	Titania	2,962		2,962 2,912
28.	Terje Viken	5,908		5,908 5,808
Sept. 1.	Titania	3,474		3,474 3,424
17.	Terje Viken	3,541		3,541 3,541
Oct. 13.	Terje Viken	5,903		5,903 5,853
23.	Blackheath	3,705		3,705 3,665
Nov. 3.	Titania	4,395	1,340	5,735— 5,705
10.	Tordenskjold	1,505	1,762	3,267 3,267
19.	Tellus	3,091	686	3,777 3,727
27.	Titania	4,007	1,758	5,765 5,665
Dec. 7.	Hercules	5,286	1,160	6,446 6,396
14.	Tellus	3,443	161	3,604 3,554
21.	Titania	3,397	2,159	5,556 5,456
		92,603	27,288	119,891 118,221
	Loaded in whole or in part at Northfield			16 cargoes
	Loaded exclusively at No. 1 Mine			9 "
		Total		25 "



## SHIPMENTS FROM NANAIMO, B. C., TO SAN FRANCISCO.

Name of Vessel.		Loaded at		Totals.
		No. 1 Mine.	Northfield Estimated.	Bill Lading and Inv.
1907.				
Jan. 18.	Titania	3,847	1,745	5,592
29.	Condor	2,628	1,706	4,334
Feb. 6.	Tellus	1,618	1,988	3,606
23.	"	3,558		3,558
Mar. 16.	Torndenskjold	922	4,4856	5,778
26.	Titania	2,489	3,232	5,721
Apr. 13.	Tellus	2,509	1,280	3,789
27.	Titania	2,682		2,682
May 8.	Torndenskjold	2,905	2,918	5,823
25.	Hornelen	1,289	3,838	5,127
June 8.	Torndenskjold	3,021		3,021
18.	Hornelen	3,179	2,846	6,025
July 3.	Tordenskjold	649	2,068	2,717
17.	Hornelen	3,784	2,264	6,048
Aug. 14.	Tellus	1,365-	2,236	3,601
22.	Torndenskjold	4,005	1,889	5,894
29.	Tellus	2,098	1,499	3,597
Sept. 6.	Hornelen	3,917	2,240	6,157
27.	"	2,472	3,324	5,796
Oct. 11.	Torndenskjold	4,086	1,772	5,858
25.	Hornelen	1,955	1,933	3,888
Nov. 14.	Hornelen	4,730	1,535	6,265
23.	Torndenskjold	3,571	2,282	5,853
Dec. 3.	Hornelen	4,073	2,211	6,284
20.	Tordenskjold	3,490	2,475	5,965
		70,842	52,137	122,979
Loaded in whole or in part at Northfield				22 cargoes
Loaded exclusively at No. 1 Mine				3
				<hr/>
Total				25

[1293—1231]

SHIPMENTS FROM NANAIMO, B. C., TO SAN FRANCISCO.

	Name of Vessel	Loaded at		Totals.	
		No. 1 Mine.	Northfield Estimated.	Loading Weights.	Bill Lading and Inv.
1908.					
Jan. 16.	Hornelen	6,425		6,425	6,425
30.	Titania		5,705	5,705	5,705
Mar. 18.	Hornelen	2,290	3,954	6,244	6,244
Apr. 14.	Titania	645	5,057	5,702	5,702
May 23.	Thor	1,540	5,865	7,405	7,405
July 11.	Thor	72	7,215	7,287	7,287
31.	Tordenskjold	1,750	4,230	5,980	5,980
Sept. 26.	Tordenskjold	3,764	2,058	5,822	5,647
Oct. 13.	Titania	4,160	1,712	5,872	5,696
Nov. 23.	Thor	832	6,449	7,281	7,063
Dec. 2.	Torndenskjold	3,282	2,670	5,952	5,773
24.	Titania	2,962	2,981	5,943	5,765
		<hr/> 27,722	<hr/> 47,896	<hr/> 75,618	<hr/> 74,692
	Loaded in whole or in part at Northfield			11 cargoes	
	Loaded exclusively at No. 1 Mine			<hr/> 1	
	Total			<hr/> 12	

[1294—1232]

## SHIPMENTS FROM NANAIMO, B. C., TO SAN FRANCISCO.

Name of Vessel.		Loaded at		Totals.
		No. 1	Northfield	Lading
		Mine	Estimated	Weights and Inv.
1909.				
Jan. 26.	Titania	2,591	3,272	5,863
Feb. 12.	Thor	2,638	4,674	7,312
26.	Titania	3,229	2,619	5,848
Mar. 13.	Thor	2,614	4,693	7,307
21.	Wellington	512	1,842	2,354
Apr. 8.	Thor	2,135	5,197	7,332
22.	Titania	2,477	3,409	5,886
May 15.	Thor	2,420	5,002	7,422
26.	Wellington		2,376	2,376
June 5.	Thor	4,824	2,508	7,332
17.	Titania	2,786	3,213	5,999
26.	Thor	3,675	3,712	7,387
30.	Wellington	1,216	1,178	2,394
July 17.	Titania	1,021	4,878	5,899
Aug. 5.	Thor	3,272	4,120	7,392
19.	Titania	1,216	4,745	5,961
Sept. 17.	Titania	2,190	3,652	5,842
18.	Wellington	2,363		2,363
Oct. 5.	Wellington	586	1,767	2,353
11.	Thor	1,646	5,753	7,399
22.	Wellington		2,336	2,336
Nov. 5.	Thor	3,589	3,702	7,291
18.	Leelanaw	1,109	1,717	2,826
Dec. 3.	Thor	3,115	4,273	7,388
		51,224	80,638	131,862
				129,049

Loaded in whole or in part at Northfield 23 cargoes

Loaded exclusively at No. 1 Mine 1

Total 24

SHIPMENTS FROM NANAIMO, B. C., to SAN FRANCISCO.

Name of Vessel.		Loaded at		Totals	
		No. 1	Northfield	Lading	Bill
		Mine.	Estimated	Weights	Lading and Inv.
1910.					
Jan. 29.	Thor	5,458	1,832	7,290	7,217
Feb. 22.	Thor	3,925	3,292	7,217	7,145
Mar. 9.	Leelanaw	818	1,955	2,773	2,745
15.	Thor	5,282	2,019	7,301	7,228
26.	Thode Fagelund	3,102	3,663	6,765	6,698
Apr. 30.	Thor	3,767	3,599	7,366	7,293
May 7.	Leelanaw	1,700	1,093	2,793	2,765
30.	Thor	4,258	3,165	7,423	7,348
July 2.	Jethou	3,727	3,213	6,940	6,871
16.	Thor	4,107	3,326	7,443	7,359
Aug. 5.	Thor	4,010	3,448	7,458	7,384
18.	Leelanaw		2,824	2,824	2,796
27.	St. Nicholas	2,477	1,630	4,107	4,107
Sept. 20.	Thor	4,528	2,748	7,276	7,203
Oct. 8.	Leelanaw	448	2,338	2,786	2,759
21.	Falls of Orchy	3,484	3,424	6,908	6,839
27.	Leelanaw		2,826	2,826	2,798
Nov. 18.	Leelanaw		1,635	1,635	1,619
Dec. 3.	Cuzco	2,250	3,634	5,884	5,825
17.	Thor	3,589	3,628	7,217	7,145
		56,930	55,292	112,222	111,144

Loaded in whole or in part at Northfield 20 cargoes

Loaded exclusively at No. 1 Mine. 0

Total 20

## SHIPMENTS FROM NANAIMO, B. C., TO SAN FRANCISCO.

		Name of Vessel.	Loaded at		Totals.	
			No. 1	Northfield	Loading	Bill
			Mine	Estimated	Weights	Lading and Inv.
1911.						
Jan.	6.	M. S. Dollar	3,246	2,790	6,036	5,976
	21.	Thor	3,922	3,394	7,316	7,243
Feb.	11.	Thor	4,171	3,095	7,266	7,193
	20.	Tordenskjold	2,482	3,305	5,787	5,729
Mar.	2.	Thor	4,020	3,246	7,266	7,193
	15.	St. Ronald	1,626	4,141	5,767	5,709
Apr.	7.	Henley	1,582	3,426	5,008	4,958
	14.	Titania	3,357	2,274	5,631	5,575
	26.	Thor	2,451	4,930	7,381	7,307
May	18.	Thor	3,449	3,937	7,386	7,312
June	4.	Thor	4,881	2,555	7,436	7,362
	17.	St. George	471	984	1,455	1,441
	19.	Lonsdale	2,636		2,636	2,610
	21.	Thor	4,655	2,779	7,434	7,360
July	7.	Boveric	3,916	2,684	6,600	6,534
	15.	Coulsdon	3,335	3,330	6,665	6,598
Aug.	4.	Damara	4,838	2,752	7,590	7,514
	11.	Tricolor	879	3,581	4,460	4,415
	21.	Candidate	1,732	1,366	3,098	3,067
	26.	Thor	534	2,823	3,357	3,323
Sept.	9.	Senator	2,150	2,998	5,148	5,098
	28.	Thor	576	4,108	4,684	4,684
Oct.	7.	Bannockburn	4,079	3,441	7,520	7,445
	11.	Belle of Scotland	821	685		1,506
	28.	Thor	2,745	4,546	1,506	7,218
					7,291	
Dec.	2.	Mathilda	2,623	3,774		6,333
	29.	Thor	2,401	4,888	6,397	7,216
					7,289	
			73,578	81,832	155,410	153,919

Loaded in whole or in part at Northfield 26 cargoes

Loaded exclusively at No. 1 Mine 1

Total

27



# The United States of America.

1485

## SHIPMENTS FROM NANAIMO, B. C., TO SAN FRANCISCO.

Name of Vessel.		Loaded at		Totals.	
		No. 1	Northfield	Loading	Bill
		Mine	Estimated	Weights	Lading and Inv.
1912.					
Jan. 13.	Thor		2,000	2,000	2,000
Feb. 3.	Wellington		2,350	2,350	2,507
9.	Thor	5,124	2,041	7,165-	7,093
16.	Wellington	236	2,141	2,377	2,353
27.	Thor	4,174	2,995	7,169	7,097
Mar. 11.	Ikalis	4,449	2,117	6,566	6,500
18.	Wellington		2,318	2,318	2,295
31.	"		2,266	2,266	2,243
Apr. 5.	Thor	5,600	1,634	7,234	7,162
12.	Wellington	638	1,717	2,355	2,331
24.	Ikala	2,817	3,818	6,635-	6,569
May 8.	Wellington		2,383	2,383	2,359
18.	"	771	1,688	2,459	2,434
28.	Christian Bors	1662	1,897	3,559	3,559
30.	Wellington	1505	864	2,369	2,345
June 11.	Wellington	1,507	852	2,359	2,415
25.	"	706	1,689	2,395	2,371
July 6.	Wellington	42	2,397	2,439	2,415
12.	Thor	5,677	1,575	7,252-	7,180
18.	Wellington	968	1,428	2,396	2,372
22.	Solveig	1,231	810	2,041	2,041
30.	Gifford	5,321	1,525	6,846	6,846
31.	Wellington	267		267	267
Aug. 20.	Wellington	979	1,400	2,379	2,355
Sept. 10.	Ikalis	1,488	5,007	6,495	6,430
18.	Wellington	553	1,774	2,327	2,304
Oct. 5.	Wellington	804	1,445	2,249	2,227
26.	"	9	2,260	2,269	2,246
Nov. 19.	Queen Elizab.	3,022	3,813	6,835	6,767
23.	Wellington	8	2,263	2,271	2,248
Dec. 6.	Wellington	65	2,186	2,251	2,228
24.	"		2,251	2,251	2,228
31.	Leona		761	761	761
		49,623	65,665	115,288	114,548

Loaded in whole or in part at Northfield 32 cargoes.

Loaded exclusively at No. 1 Mine

1

Total

33

(Testimony of Thomas R. Stockett.)

## SUMMARY

## SHIPMENTS FROM NANAIMO, B. C., TO SAN FRANCISCO.

From April, 1906, to December, 1912, Both Inclusive.

Year.	No. 1 Mine.	Loaded at	
		Northfield Estimated	Loading Weights.
1906	92,603	27,288	119,891
1907	70,842	52,137	122,979
1908	27,722	47,896	75,618
1909	51,224	80,638	131,862
1910	56,930	55,292	112,222
1911	73,578	81,832	155,410
1912	49,623	65,665	115,288
	<hr/> 422,522	<hr/> 410,748	<hr/> 833,270

Year.	Cargoes Loaded in Whole or in Part at Northfield.	Cargoes Loaded Exclusively at No. 1 Mine.
1906	16	9
1907	22	3
1908	11	1
1909	23	1
1910	20	0
1911	26	1
1912	32	1
	<hr/> 150	<hr/> 16 )

[1299—1237]

Q. Mr. Stockett, I show you a bill which has been introduced in evidence here by the prosecution as part of a file of bills received at the office here, and which is marked "U. S. Exhibit No. 134," and on which appears, for instance, the steamer "Thor," 7112 tons New Wellington Coal, and down at the bottom it says "Actual weight of this cargo 7332"; what, for instance, is the first figure here of 7112 Wellington Coal; what does that correspond to?

A. That corresponds to the estimated weight of the cargo after the deduction had been made.

Q. What does the figure, actual weight of this

(Testimony of Thomas R. Stockett.)

cargo, 7332 tons, refer to?

A. That was our estimated weight of the contents of the boat—of the cargo.

Q. I notice the expression “actual weight” is used there; does that or does it not indicate a weight arrived at by actual weighing? [1300—1238]

A. No, sir.

Q. Now, I notice, Mr. Stockett, that in 1906, the first cargo shipped exclusively from the No. 1 Mine, namely, the “Titania,” on July 6th, 1906, no deduction was made. And the same is true of the second cargo, the “Torje Viken” on August 5th, that no deduction was made; that is the second cargo loaded exclusively at the No. 1 Mine; but I notice that after that a deduction is made on some at any rate of the cargoes that were loaded exclusively at Nanaimo, and where the weight was obtained by an actual weighing; will you explain why or how it happened that a deduction was made not only in the case of the Northfield cargoes, but in the case of some at any rate of the cargoes from the No. 1 Mine where the cargo was actually weighed as it went on board?

A. There was no reason to make a deduction from the cargoes that were loaded exclusively at No. 1 Mine, and at first there was not any; afterwards it seemed to have dropped into the regular course of events and the men who made the bill of lading and invoices out at the general office perhaps overlooked the fact that the vessel was loaded exclusively at the No. 1 Mine. That is the only explanation I can give as to why some of those cargoes have a deduction

(Testimony of Thomas R. Stockett.)

made from them.

I first learned that a deduction was made on these cargoes which were loaded exclusively at the No. 1 Mine when I came to make up my statement about the middle of the summer of 1913. I was making up that statement for this case.

Q. I notice that in 1912 on your list you have changed the Northfield estimated weight and loading weight of the cargo of the "Wellington" on February 3, from 2532 to 2350; will you state why you made [1301—1239] that change?

A. Just let me see that.

Q. I want to call your attention to those two red ink ones.

A. In making up the estimates weight for the ship's bill of lading, to get the ship out when it was finished, it was made on the basis of 2507 tons; soon after the vessel went out a mistake was discovered; 157 tons of lump coal had been furnished the ship's own fuel bunkers, for the ship's own use, and in making up the papers hurriedly at the office, the 157 tons were added to the 2350 tons of estimated cargo, and that was the reason for the bill of lading and invoice going out on the 2507 tons basis. As soon as that was discovered at the head office, or the Nanaimo office, where all the accounts are rechecked, the correction was sent down by mail. The original papers got out on the boat, but the correction was sent down by mail.

Q. Sent where?

A. Sent to the general office at San Francisco.

(Testimony of Thomas R. Stockett.)

Q. The general office of the company at San Francisco?

A. The general office of the coal company, yes, sir.

Q. Referring to the cargo of the "Wellington," on June 11, 1912, I notice a change there; will you explain to the jury the reason for that change?

A. A mistake was made in the compiling of the estimated weight. There is always more or less hurry when the ship is finishing, to get her off, depending on the tide or the state of the weather, or whether it is night or day, and a mistake was made in computing the figures for the estimated weight and it was sent out as 2415 tons. At the general office the mistake was discovered and a correction made in that case, and it was stated right on the invoice that followed by mail, that the actual weight was 2359 tons instead of the bill weight of 2415 tons. [1302—1240]

I am familiar with the method followed at the No. 1 Mine for getting the weights of coal. They are taken on a Standard Fairbanks Scale, the platform of which is about 11 feet 3, by 7 feet 9, and is large enough to hold our small coal cars nicely. The scale had a beam capacity of 65 gross tons. The main beam was graduated to tons and half-tons. There was a movable poise that had the graduations for the hundred weights from 100 to 1000. The carriage would be set at the half-tons, or the tons and half-tons, just below the weight of the car—the contents. The poise or the little carriage on this beam would be moved by a hand-ratchet until the scale took the



(Testimony of Thomas R. Stockett.)

balance; the hundred weight that was indicated by this little hand-ratchet was added to the tons or to the tons and the half-tons; in other words, it might be 6 tons and 500 weight, or 6 tons and 1500 weight; if the lower poise indicated five hundred weight, then if the carriage stood at the six tons, it would be six tons and five hundred weight; or, if it was six tons and one-half on the main beam, then it would be six tons and fifteen hundred weight that would be taken as the weight. It took from 21 to 23 seconds to weigh a car. The beam when the weight was taken would be between the center and the bottom. I would describe that method of weighing as on a falling beam. I have observed the weighing there many times and have weighed there often myself. I have made experiments to determine the difference on those scales between weighing with the beam just above the lower end of the catch, so to speak, and a rising beam just below the upper end. I made such an experiment in September, 1913. After I had learned that there was a difference in the methods of weighing coal.

Q. Just describe the experiment and what you found.

A. I had a usual size train of 20 cars brought down from the mine and had them weighed in three different methods. Our usual method and a center-beam and a rising beam. On the same [1303—1241] cars, the same coal, all weighed under the same conditions, all weighed during the same afternoon and at the same time; the result of that was, as

(Testimony of Thomas R. Stockett.)

indicated on the statement I have here of the difference between a rising and a falling beam, of a trifle over one per cent; in other words, a difference of 123 tons to a car.

Q. 123 tons?

A. No, I mean 123 lbs. to a car; the cars averaged in the neighborhood of 12,000 lbs. The difference between the center and the falling beam was 67 lbs. to the car, or 0.56 per cent; between the center and the rising-beam there was a difference of 56 lbs. per car, or 0.47 per cent; making the difference between the rising and the falling beam 123 lbs. per car, or 1.03 per cent.

It is not possible to weigh on those scales to within 5 or 10 pounds of the exact weight because the lowest graduations are 14 pounds. In a general way in the process of weighing we would take to the nearest hundred-weight. The cars are tared two or three times a year, and, occasionally, four times, depending on the change of the seasons. We find a difference between the wet and the dry weather of an average of about two hundred-weight to the car, due to absorption of moisture or drying out in the summer.

The object at Nanaimo and at Northfield is to load steamers to capacity. That was invariably done, unless we were caught without some coal on a Saturday night or a holiday, when rather than keep the steamer over for a day or two, we would dispatch it with a cargo a little short. There is a difference between the seasons of the year in respect to the loading capacity. The ships have a summer draught

(Testimony of Thomas R. Stockett.)

and a winter draught. In the [1304—1242] summertime they load deeper in the water. We begin to load light for the winter sometime in the latter part of September, at about the time of the equinoctial storms. They begin to load heavy again for the summer in the latter part of March or the first of April. The way in which the draught of the vessel is taken is this: the wharfinger, or the man in charge of loading, gets into a little row-boat and takes the draught at the bow and at the stern of the boat by observation, all the ships having the even feet marks showing very plainly and the fractions of a foot. The men do not, however, always use a small boat. I discovered men several times standing at the wharf and just looking down at the bow and the stern, taking the draught of the vessel in that manner. They were cautioned not to do that any more, because their observations would not be as accurate in that way as from the small boat. You cannot take the draught so accurately when the water is rough as when it is smooth. The Northfield wharf is located on Departure Bay which is a harbor of about a mile and a half or two miles in diameter and surrounded by bluffs. There is nearly always more or less commotion on the water, due to winds from the north and northeast. The wharf at Northfield is on the south shore and the prevailing winds in the summertime are northwest, north and northeast. In getting the draught we have to allow for the load in the vessel other than the cargo; for instance, the ship's bunkers and stores, fresh and salt water in the bal-

(Testimony of Thomas R. Stockett.)

last tanks, machinery, etc. The way in which such an allowance is arrived at is this: the ship's bunkers are usually observed with the Chief Engineer by our wharfinger; they, together, arrive at an estimated quantity of coal in the bunkers. We have to take the ship's report for the amount of her stores and her fresh water, etc. [1305—1243]

Q. Now, just to be certain that this is clear, Mr. Stockett, will you repeat how you get at the draught of the vessel, or I mean, how you get at the estimated cargo, with these allowances—that is, the bearing that these allowances that you are required to make upon your method of getting at the estimated weight?

A. Well, they have their influence upon our estimated weight; they may have the effect either one way or the other.

Q. Let me get at this way: when you take the draught of the vessel and compare the draught with the vessel's scale, what do you get?

A. We get so many tons according to the ship's scale; if we have a certain draught, that multiplied by the ship's scale, whatever it may be, gives you the contents of the boat.

Q. And if the boat has any cargo, or rather, any coal in the hold, or any fuel in the bunkers, or anything of that sort, that has to be deducted from the weight given by the scales?

A. That has to be deducted from the estimated dead weight of the cargo.

Q. Did you ever have any difficulty in getting at an accurate estimate; for instance; do you have any



(Testimony of Thomas R. Stockett.)

trouble with the water ballast at all?

A. Yes, sir; quite frequently.

Q. What is it?

A. We have no control over the handling of the ship—and the ship's officers quite frequently have a practice of manipulating the ballast in the tanks for keeping the ship in pose as we are putting the coal in; they will tell us at times that the tanks are empty or the tanks have so much in; I have seen myself,—I have seen them pumping water into the tanks or pumping water out of the tanks without saying anything to us about it; that has its influence upon the contents of the cargo.

Q. What is the office of those tanks, what functions do they have? [1306—1244]

A. To keep the ship in poise; more particularly when there is no cargo in, when they are coming back empty; or at sea empty. If the cargoes are not loaded evenly, they are used to balance the ship.

The United States Geological Survey has made an examination of the mines at Nanaimo. They examined the working faces and took samples of the coal. The letter and the reports now shown me are those which were prepared by the Government in this connection.

(At this point said papers and reports were marked Defendants' Exhibit "FF" for identification, counsel for the Government objecting to their introduction in evidence upon the ground that no sufficient foundation had been laid in this, namely, that it was not shown that said letters and reports had been



(Testimony of Thomas R. Stockett.)

brought to the attention of the defendants, or any of them, and that, therefore, they were not admissible as they might otherwise be for the purpose of showing that the defendants relied upon these reports as accounting for differences between the invoice or bill of lading weight and the out-turn or custom-house weight on coal shipped from Nanaimo to San Francisco, so that the mere existence of a shortage would not be *ipso facto* evidence of a fraudulent or guilty intent on the part of the defendants.)

I have made observations and know of my own knowledge the humidity of the mine. The humidity percentage of moisture of the air in the mine usually runs from 80 to 95%. I have had experience of an overage at the mine. During the year 1908 when the demand for coal was very slack, we were storing considerable coal in Nanaimo, both in the bunkers and in piles. This coal was accumulated during the summer months, June, July, August and [1307—1245] September. In the fall when business became brisk, the coal was gradually sold off, and, by the end of the year, the accumulation had been disposed of. There was one pile particularly of 3,500 or 4,000 tons. The pile was out in the open near the wharf. By the end of the year that coal had been disposed of, and in checking up results, we found quite a little overage in the contents of the pile. It was something over 200 tons. As to the moisture to which that coal had been exposed, I would say that our wet season begins usually at the equinoctial period and continues right on through until spring, and that this coal from Sep-

(Testimony of Thomas R. Stockett.)

tember on had been subject to the influence of the weather. We found some cases of shortage during that same year. We had the bunkers loaded high in order to keep the mine running steady; we had accumulated quite a content of coal in the bunkers, and that coal being the easiest to reload into the cars, was taken out first and put on the ships as they came up. When that coal was checked out there was a shortage. As to the moisture conditions or drying out conditions to which that coal had been subjected, I would say that it was out in the open, not exposed to quite the same extent as the other piles, but still, in so far as all the bunkers were open on top, subject to the influence of the weather so far as the top of the pile was concerned. That coal was disposed of in the early part of the season, however, and was subjected to practically no rain.

Cross-examination by Mr. SULLIVAN.

I am, as trustee for my minor son, a stockholder in the Western Fuel Company to the extent of, I think, 26 shares. I am the representative and manager of the Western Fuel Company at Nanaimo and Northfield, and have represented the company there since July, 1904. My salary is now \$1,000 per month and has been for about two years. [1308—1246]

Of the two mines, No. 1 and Northfield, No. 1 is the larger. In 1912, 49,623 tons were shipped from No. 1 Mine; and from Northfield an estimated quantity of 65,665 tons, or a difference of 16,000 tons more from Northfield than from No. 1. In 1911, according to my table, there was shipped from No. 1 Mine, 73,578

(Testimony of Thomas R. Stockett.)

tons, and from the Northfield Mine, 81,832 tons, a difference of about 8,000 tons. In 1910 No. 1 shipped 56,930 tons and Northfield, 55,292 tons. In 1906, Nanaimo shipped 92,603 tons, and Northfield 27,288 tons. During the entire period from April, 1906, to December, 1912, No. 1 Mine shipped 422,522 tons and Northfield an estimated amount of 410,748 tons, a total shipment of 833,270 tons, so that during the entire period there was an excess of shipment from the Nanaimo Mine, Mine No. 1, of about 12,000 tons over the amount shipped from the Northfield Mine. All of the coal shipped from Northfield and mentioned in my statement was consigned to San Francisco.

March 16, 1906, was the date of the first cargo loaded at Northfield on estimated weights. Prior to that time we took actual weights on the scales. After we began to use the estimated weights we had a system of comparing the draught of the boat with the estimated quantity of coal we had in the bunker or the estimated quantity that the mine produced. The boats were loaded directly from the bunker and from the mine. I should say that it would be about half and half. At the Northfield Mine the bunkers are frame structures. The lump coal is in one continuous bunker, without pockets; the bunkers are not graduated in any way at all, so as to enable us to make an estimate of the amount of coal in the bunkers at stated times. We can, however, compare the estimate of the weight based on the draught of the vessel with the estimated weight of coal in the

(Testimony of Thomas R. Stockett.)

bunkers. From the mine production we figure on a percentage of lump coal being produced [1309—1247] in the mine, and that is used as a basis to work on. It is not accurate, because the percentage of lump coal brought out of the mine varies from day to day. We keep a daily record showing the quantity of coal estimated to be in the bunkers, and then, as I have said, compare that estimate with the estimate of the coal based upon the draught of the vessel. That was a matter of daily process and experience whenever a vessel was being loaded. The displacement scale of the ship to which I referred in my direct examination is shown on a blue-print in the ship's cabin. It is made by the builders of the ship. It is a table, not a scale, that you can weigh coal on. The blue-print may be 6 to 10 inches wide and 2 to 10 feet long, and there is a graduated scale worked off on there by the builders of the ship showing the weight of the estimated contents of the vessel according to the draught. During the year 1906, when we first commenced taking our weights by estimate, we compared the estimate of the coal in the bunkers with the estimate of the coal that went into the vessel, based upon the draught of the vessel, but we did not go into the detail of the latter until the vessel was about loaded. We regularly made a table showing the comparison between the estimate of the coal in the bunkers and the estimate of the coal in the vessel, when loaded according to the draft of the vessel. I have not brought those tables with me from Nanaimo. In answer to the question how those estimates com-



(Testimony of Thomas R. Stockett.)

pare, I would say that they fluctuate. There would be differences sometimes one way and sometimes the other way, but there would be no great difference in the course of a year. Whether the difference was merely nominal, I would not say without looking at the statement.

The Western Fuel Company has weighed some of its coal from the Northfield Mine when the shipments were made to parties other [1310—1248] than to itself. That has been the invariable practice in such cases. We have not, however, weighed any coal at all at the Northfield Mine since March 16, 1906, that was shipped to the Western Fuel Company. We weighed the coal that was sold to ships for fuel purposes at the Northfield Mine. I think that was done regularly. I cannot recall any case where it has not been done. The weights of this fuel coal were taken on the hopper scales which have been in use at various times since 1906.

Q. Now, have you at any time deliberately estimated the amount of coal that went into any ship—in other words, have you made a record of the amount of coal going into a ship which is higher than the ordinary estimate, or the actual weight?

A. I cannot say that I understand you.

(Question repeated.)

\* \* \* \* \*

A. No.

Q. Have you, at any time, made a record of the weight of coal that went into the bunkers of a ship for fuel purpose in excess of the actual weight of the



(Testimony of Thomas R. Stockett.)

coal that went into the bunker?

A. If the coal was weighed, we took the actual weight; if there was a case where it was estimated, we would get at it as best we could. I don't recall right now any cases where it was estimated.

Q. No, as I understand you to-day, all of the bunker coal was weighed. A. That was the instructions.

Q. And you carried out the instructions continually, didn't you?

A. So far as I am aware of now.

Q. You don't remember of a single instance where you loaded coal into the bunkers of a ship where the coal was not actually weighed upon the scales?

A. There might have been a case or two of that kind, but I can't recall any at the present time.  
[1311—1249]

Q. You can't recall at the present moment?

A. No.

\* \* \* \* \*

Q. Can you recall any instance where you loaded bunker coal upon a ship at the Northfield mine, where you entered in your records a weight in excess of the actual weight of the coal?

\* \* \* \* \*

A. No, I don't recall any.

I was in the habit of following instructions received by me from the home office in San Francisco. These instructions might be sent to me by Mr. Howard, or by the Secretary, or by the Manager, Mr. J. B. Smith.

(A letter was here shown to the witness, addressed to him, and dated May 9, —6, purporting to be a copy

(Testimony of Thomas R. Stockett.)

of a letter signed, "Yours truly, \_\_\_\_\_, Vice-president.") According to my best recollection, that letter was signed by Mr. James B. Smith. I received a letter to the same effect as that shown by this copy; whether this is an exact copy, I do not say.

(The admission of said letter being objected to by counsel for the defendants, it was marked by the Clerk as "U. S. Exhibit No. 161" for identification.)

In making our estimates of the weights of coal shipped at Northfield, we, as I have before testified, based our calculations on the draught of the vessel. We took the draughts of the vessels upon their arrival and then commenced putting coal into the vessel, and, after we completed the cargo, we ascertained the draught again in inches or in feet. It was altogether dependent upon the ship how much coal we allowed to the draught. Each ship has a scale of its own, stated on the blue-print heretofore mentioned by me. [1312—1250] The scale on the blue-print sets forth not the quantity of coal to the inch represented by the draught, but gives the dead weight per inch or foot of draught. By that I mean a certain weight would sink the vessel that much lower into the water. The deeper she got in the water, the more it will take, the more resistance on the side of the ship.

Q. I show you what purports to be a loading-scale of the steamship "Thor" in 1907, and ask you if that is a specimen.

A. That is the style of the scales that the ships have. This is on white paper, some of them are on blue paper, but it is the same general form.

(Testimony of Thomas R. Stockett.)

Q. That purports to show the quantity of dead-weight cargo a ship will carry under certain draught.

A. Under certain draught, yes, sir.

Mr. SULLIVAN.—We offer this in evidence.

Mr. OLNEY.—Well, now, does it show that? You asked him to testify to the contents of the paper, didn't you?

Mr. SULLIVAN.—Q. State what that is.

Mr. OLNEY.—Just read the heading at the Table of Weights.

A. Loading-scale 1907, steamer "Thor." On one side is the freeboard, which is given in feet and inches, indicating the amount of ship above the water at certain depths. In the center is the draught, starting from 6 feet 11 inches up to 24 or 25 feet. On the other side is the tons of dead-weight cargo, fuel and stores, with the nearest hundred tons to each inch—the nearest 100 tons is shown, and there is a line drawn to show where on the scale that comes, whether it is a fraction of an inch, or not; wherever it meets the scale that is the draught for that number of tons of dead-weight. It is made in even hundreds, from 100 tons up to 8,100 tons. [1313—1251]

Mr. SULLIVAN.—Q. According to that table there, what quantity of coal would be represented by the extra draught of an inch?

A. That would vary on whether the ship was light loaded or heavy loaded. The scale does not run even. The deeper the ship gets down the less the space is.

Q. An allowance is made for that variation in that table, is it not?

(Testimony of Thomas R. Stockett.)

A. Presumably, according to the builder's calculations.

Q. An allowance is made for that variation in the scale-table on all the ships; is not that so?

A. Presumably it is. It is the builder's scale, not the scale as the result of actual practice; it is the builder's estimated scale.

Mr. SULLIVAN.—We offer it in evidence.

(The document was here marked "U. S. Exhibit 162.")

Mr. OLNEY.—Mr. Sullivan, may I ask the witness a question in this particular now so that you can cross-examine in regard to it, if you want to do so, and so that I will not have to go back to it again?

Mr. SULLIVAN.—Yes.

Mr. OLNEY.—Q. Are the inches of draught marked on the outside of the vessel?

A. No, sir; just the feet marks; every foot is marked, not the inches.

Mr. SULLIVAN.—Q. But your representative there makes a division into inches and fractions of inches? A. By sight, by observation.

Q. Does he not make a division with a rule or a measure?

A. No, sir; he does not; he makes it by observation.

Q. Is not the scale on the ship oftentimes divided into inches also?

A. Not to my knowledge it is not; I have not seen any that way.

Q. Take the steamship "Thor," what was your cus-

(Testimony of Thomas R. Stockett.)

tom when loading that vessel with cargo in determining the quantity of coal that [1314—1252] went aboard the vessel based upon the draught?

A. The draught of the steamer was taken when she came in; when she was loaded the draught was taken again; that gave us the dead-weight of the cargo; from that total dead-weight, in the event of our having put any coal in at the Nanaimo mine which was actually weighed, that was deducted. The ship's bunkers were deducted. The ship's stores were deducted; the ship's fresh water and the amount of estimated tank-ballast would be deducted, and from this total dead-weight, taken by the draught, the estimated amount of coal put in at the Northfield mine was arrived at.

Q. And you would enter your estimate in the books of the company at Northfield, would you?

A. Yes, sir.

Q. In making out your bill of lading, what figure would you adopt in making out the Consular invoice?

A. Prior to March 16, 1906, the bill of lading and the invoice weights agreed with the weights at the mine because prior to that time they were actually weighed cargoes. Beginning with March 16th, 1906, the bill of lading and the invoice was made on the basis of 100 tons less than the estimated weight of large ships and 50 tons less than the estimated weight for small ships. That practice continued until November, 1907, at which time we ceased making a difference—

Q. (Intg.) That is, making an arbitrary differ-



(Testimony of Thomas R. Stockett.)

ence of that kind.

A. We ceased making the arbitrary difference; the bill of lading and the invoice weights agreed with the estimated weights up until November, 1907—that was the time when we stopped making an arbitrary reduction of 150 tons, November 12, 1907,—and that continued on until September, 1908; then we started the arbitrary deduction of 3 per cent. [1315—1253]

Q. That is, you deducted from the estimated weight of an entire cargo, 3 per cent, for the purpose of fixing the bill of lading weight?

A. Fixing the bill of lading and invoice weight; that continued until July, 1909, when we began the one per cent arbitrary difference, and that has continued since.

Q. That was in July, 1909.      A. July, 1909.

Q. And ever since that date, in loading the vessel with coal, sent to the Western Fuel Company, you made an estimate of the entire cargo weight, and for the purpose of making out your invoice or bill of lading you deducted one per cent of the estimated weight and had that inserted in the bill of lading or invoice; is that so?

A. You have got so many questions put together there, that I cannot follow it.

Q. I say that ever since 1909, in accordance with your practice at Northfield, you made an estimate of the weight of the coal, and since that date in making out your bills of lading or invoices you deducted one per cent from the estimated weight and had that inserted in the bill of lading or invoice; is that a fact?

(Testimony of Thomas R. Stockett.)

A. Since July, 1909, there has been a difference of one per cent between the estimated weight and the bill of lading weight.

Q. That is, if you estimated a cargo to weigh 5,000 tons you would deduct 50 tons from that, would you?

A. Yes, sir.

Q. And insert 4,950 tons as the true weight of the coal in the bill of lading or the invoice; is that so?

A. Yes, sir.

Q. And prior to that I understand that for quite a while it had been your practice to deduct 3 per cent—you have already testified to that. Under what circumstances do you say you made a change in the method of fixing the invoice or bill of lading weight—that is, reducing the estimate one per cent instead of 3 per cent? [1316—1254]

A. I received instructions from the general office at San Francisco to discontinue making the 3 per cent deduction and to make one per cent deduction.

Q. Where is that letter of instructions?

A. Filed in the Court.

Q. Filed here, is it?

A. It was offered in evidence this morning.

Q. Do you remember the circumstances under which you ceased making any deduction at all and had your bill of lading just tally exactly with the estimated weight?

A. You mean when you first started it.

Q. Yes.

A. There is a letter that has been filed here somewhere; we received instructions from Mr. Norcross,

(Testimony of Thomas R. Stockett.)

the Secretary, to discontinue the practice as the weights were turning out very closely to our estimates. That was in November, I think, 1907, if I recall correctly now.

Q. I show you what purports to be a copy of a letter, and ask you if this is a copy of the original letter sent to you at that time.

Mr. ROCHE.—That letter is already in evidence; it was identified by Mr. Norcross.

A. Yes, sir; I received a letter of that kind.

Q. That is a carbon copy of the original letter which you have in your possession now, is it not?

A. Yes, sir.

Mr. SULLIVAN.—Of course, this letter is already in evidence,—it is very short and I will read it to the jury again:

“November 12, 1907.

Western Fuel Company,

Nanaimo, B. C.

Dear Sirs: In the past you have been making our Bills [1317—1255] of lading on aggregate shipments to us less than the actual quantity shipped; I do not know of any reason for your further continuing this and from now on please make bills of lading on actual quantities shipped.

Yours truly,” blank “Secretary.”

Q. That was signed by Mr. Norcross, was it?

A. Yes, sir.

Q. During that period of time, and for a quite a while after that, or at least for quite a while prior to this date, you say there was really no necessity for

(Testimony of Thomas R. Stockett.)

making any distinction between the estimated weight and the bill of lading weight; is that a fact?

Mr. McCUTCHEN.—The witness did not say that; he didn't say anything like that, Mr. Sullivan.

Mr. SULLIVAN.—Q. Did you have any correspondence with Mr. Norcross with relation to the difference between the bill of lading weight and the estimated weight, prior to the receipt of this letter?

A. No, sir, not that I recall.

Q. Did you, after the receipt of this letter, receive any communication from Mr. Norcross or the Western Fuel Company explaining why there was no reason for further continuing the practice of having the estimated weight and the bill of lading weight tally? A. No, sir.

Q. Do you know if at that time the bill of lading weight and the estimated weight practically agreed, about that time?

A. Well, I would judge that that was the reason for it.

Q. And how long do you say after the receipt of this letter did you continue to make the bill of lading weight and the estimated weight agree?

A. Until September, 1908.

Q. Until September, 1908, a little less than a year.

A. Yes, sir.

\* \* \* \* \*

[1318—1256]

Mr. SULLIVAN.—Q. What happened during that period of time to bring about a change?

\* \* \* \* \*

(Testimony of Thomas R. Stockett.)

A. I can't tell you exactly how it came about, but I recall that Mr. Howard was up there in August of that year.

Q. That is, in August of 1908.

A. Yes, sir, and it must have grown out of a talk with him that we were evidently careless in the estimating of our weights because there was a growing difference in San Francisco, and his instructions were to be particularly careful. In September, when we started to load a cargo, I gave the order about making the deduction 3 per cent. I wanted to be on the safe side; I didn't want any more than we were entitled to, but I wanted to stop any dispute as between the different departments of the company. That was the reason for starting it.

Q. Up to the time you had this talk with Mr. Howard in 1908, you had never made a deduction greater than one per cent excepting when you started in originally to make an arbitrary deduction of 100 tons on big ships and 50 tons on the smaller ships?

A. We didn't make any one per cent deduction until long after this period, a year after this period.

Q. Had you ever made any one per cent deductions at all prior to this period in 1908?

A. It might have worked out sometimes to be one per cent, but that was not the rule.

Q. Was not the deduction which you had practiced prior to 1907, 100 tons for large ships and 50 tons for smaller ships, practically a one per cent deduction?

A. It was not based on a percentage at all; it was



(Testimony of Thomas R. Stockett.)

just an arbitrary figure of 50 tons for small sized ships or small cargo and 100 tons for large ships or large cargoes. [1319—1257]

Q. Take the case of the "Thor," what was the average cargo of the "Thor"?

A. The "Thor" would run from 7,000 to 7,200 or 7,300 perhaps in the summer.

Q. In the case of the "Thor" you made an arbitrary deduction of 100 tons, as I understand you.

A. Yes, sir.

Q. And in the case of the smaller vessels you made a deduction of only 50 tons. A. 50 tons.

Q. At any time a deduction was made of 100 tons for large ships and 50 tons for the smaller ships, do you know if you made a deduction of more than 11½ per cent in fact on the entire cargo?

A. I couldn't tell what the percentage was until I knew the size of the cargo.

Q. From your knowledge of the ships you dealt with and the amount of cargo generally taken on the ships, will you say that the amount of deduction at any time ever exceeded more than 11½ per cent on the entire cargo?

A. Yes, sir, I will say that it did exceed 11½ per cent of some of the cargo.

Q. Did it exceed 2 per cent?

A. I think not; some of the cargoes were 5,200 or 5,100 tons.

Q. Why did you in 1908, after this talk with Mr. Howard, conclude to make an arbitrary deduction of 3 per cent, greater than any deduction theretofore

(Testimony of Thomas R. Stockett.)

made, 3 per cent of the estimated tonnage, for the purpose of fixing the bill of lading tonnage?

A. Because I realized that estimating the boats there was a liability of errors creeping in; that the tendency of men is to over-estimate, and I did not want from my department anything more than I was entitled to, and I was perfectly willing to make it 3 per cent if it required 3 per cent to make it work out right.

\* \* \* \* \*

[1320—1258]

Q. In 1907, at the time you received the instructions from Mr. Norcross, the company thought it was dealing fairly with itself by accepting as the bill of lading weights the estimated weight.

A. Yes, sir.

Q. It was found by experience that it was dealing fairly with itself, did it not? A. At that time.

Q. At that time, in making an estimate of the weight of coal you took into consideration the draught of the vessel, the amount of other cargo upon the vessel, the tank weight of the vessel, the weight of the stores and all these other elements which you say you took into consideration in making the estimated weight; is not that the fact?

A. The very same considerations were taken in at that time, the same elements.

Q. The very same elements were taken into consideration when you concluded to make the bill of lading weight correspond with the estimated weight as when you made a deduction of 100 tons and 50

(Testimony of Thomas R. Stockett.)

tons, and when you made a deduction of  $1\frac{1}{2}$  per cent or 2 per cent, the same conditions existed, did they not? A. The same conditions existed.

Q. After consulting Mr. Howard, why is it you fixed the deduction at 3 per cent of the estimated weight?

A. Because, as I understood it, the cargoes were coming out quite considerably below our estimates, and as I said before, I wanted to be on the safe side.

Q. You had been on the safe side when you made a deduction of only 2 per cent for a number of years. Why didn't you adopt a deduction of 2 per cent instead of 3 per cent?

A. When it originally started it was just an arbitrary instruction of mine to start with 50 tons or with 100 tons, according to the size of the cargo. [1321—1259]

Q. But in all those cases the deduction was less than 2 per cent—it was less than 2 per cent, was it not; and you found that to be too much, did you not?

A. In the course of time we did; we found we were estimating nearer to the actual contents.

Q. If you found 2 per cent to be too much, what reason can you give for raising it to 3 per cent after this talk with Mr. Howard in 1908?

A. Because we were over-estimating the actual out-turn as I understood it from down here.

Q. And at that time there was no deduction whatever from the estimated weight? A. No, sir.

Q. How long did that 3 per cent deduction continue in force?

(Testimony of Thomas R. Stockett.)

A. About a year; less than a year; it continued on until July, 1909.

Nanaimo is a very wet country in the winter season, and that is true practically of all the surrounding country about Nanaimo and Northfield. The winter season lasts from four to six months, and we have rain practically all of that time. The down-pour, as I remember it, runs from 38 to 46 inches per annum. It was during the summer of 1908 that the pile of coal to which I have referred was exposed to the elements. We began accumulating the piles, I should say, in June and continued with the accumulation right along until the fall season. The accumulation was at Nanaimo, one pile in the bunkers and one in the wharf-yard. In the yard the pile was from 3,500 to 4,000 tons, and it was exposed from September, when the rains began, until the end of the year, in December, when the coal was finally disposed of. The coal increased in weight by reason of the falling rain a little over [1322—1260] 200 tons. It was weighed before being put in the pile, and it was weighed out after it was sold. The sale was for any trade that came along at the time. A record was kept on our books showing the exact quantity of coal piled in the yard and the exact quantity sold out of the pile at different times. I don't think that I sent that record to the office in San Francisco, or any record or letter referring to that particular pile. Whether the record is now in existence, I don't know. The wharfinger may have a record in some of his books. The coal was weighed

(Testimony of Thomas R. Stockett.)

upon what I understand now is a falling beam, from the center down. I knew at the time the coal would be re-weighed when it was taken from the storage pile. I weighed the coal upon a falling beam, because that was our custom. In the ordinary course of my work I had to pass the weigh-house daily, and I invariably stopped there to talk with the weighmen, and the probabilities are I saw quite a little of that coal weighed. It was weighed upon a railroad platform track-scale at the Nanaimo Mine. All of our coal that goes on similar scales is weighed upon the falling beam, whether it goes to the local trade or to other trade. In answer to the question whether I know that the local dealers sell upon an even beam, I would say I never heard of any difference regarding the position of the beam until this summer and in connection with this case, when I was informed that the Government had a rule regarding the weighing of base commodity upon a rising beam; I then asked what that meant and, for the first time, found out that there were different systems in the weighing of coal. In answer to the question whether or not I know that the weight of coal sold upon a falling beam is not a correct weight, I would say I do not know that. I think it is an honest weight and it has been in vogue there ever since I have been there. In answer to the question whether the coal weighed upon the bunkers and sold to the ships [1323—1261] for their bunkers is handled upon a rising beam, an even beam or a falling beam, I would say that all of our coal is sold on what I call a falling



(Testimony of Thomas R. Stockett.)

beam, as I understand the distinction now. I have found by the series of experiments I have carried on that the difference in weight between the results of a falling beam and a rising beam is about one per cent; the difference between the weight taken on an even beam and the weight taken on a falling beam would be about one-half of one per cent.

Q. The absolute fair way of taking a weight is upon an even beam, is it not?

A. I don't know why you call it the fair way; we think our way up there is fair because it has been the custom of that mine and the custom of the company prior to my going there.

Q. Now, Mr. Stockett, the actual weight of any commodity is that taken upon an even beam, is it not?

A. That would be the actual weight, yes, sir.

\* \* \* \* \*

Q. Now, as I understand it, you take the weight upon a falling beam and charge the ship-owner for the weight so taken, do you not? A. Yes, sir.

Q. And the weight so taken is a weight equal to one-half of one per cent, between the actual weight, the weight taken upon an even beam and that which is taken upon a falling beam.

A. There is a difference of one-half of one per cent.

Q. Now, as a matter of fact, the man who pays for 5,000 tons of coal say, or a man who buys 1,000 tons of coal for fuel purposes upon his vessel is charged by you up there for more than 1,000 tons, according

(Testimony of Thomas R. Stockett.)

to the actual weight, is he not?

\* \* \* \* \*

A. If he gets 1,000 tons he is charged for 1,000 tons. [1324—1262]

Q. But that 1,000 tons he is charged for is 1,000 tons figuring upon a falling beam, is it not?

A. Yes, sir.

Q. And the actual weight of that coal is really one-half of one per cent less, is it not?

A. Not according to our method and our system.

Q. According to your system, is not that so?

A. According to our system it is 1,000 tons.

We have what we call warm weather in the summer in Nanaimo and Northfield. I have seen the temperature as high as 86 to 88 in July or August. I am not positive as to what the average temperature would be in the summer-time. I do not know how the summer temperature would compare with that of San Francisco. We commenced to form the pile of coal that I have spoken of as exposed to the summer elements in the months from June to September, and it was sold out through the balance of that year. A pile of coal was put into the bunkers at the same time; they were filled first. The bunkers were open on top. Less coal was taken out of the bunkers in weight than was weighed in. Somewhere in the neighborhood of 7,000 to 7,500 tons were placed in the bunkers and the last portion was taken out by the early part of September, before the rains started up. That was the easiest coal to put in our cars and we naturally loaded it out first. We don't

(Testimony of Thomas R. Stockett.)

have any fogs up there such as you have here in San Francisco. A notation was kept in the office of the diminution of coal in the bunkers. I do not communicate the fact of such diminution to the office here in San Francisco. The record is probably still extant at Nanaimo. I do not recall the per cent of diminution or the amount in tons. If that coal had been completely [1325—1263] covered up in the bunkers, instead of being exposed on the top or surface, the diminution would probably have been the same at that time of the year. The bunkers are located just back of the water at Nanaimo, but they are on the land. The front end of the bunkers is right at the water's edge. The humidity of the atmosphere in the mines runs from 80 to 95%. We conducted a series of experiments on that point in 1909 and 1910. The test was made by the superintendent of the mine, and a record of it was kept. The voyage from Nanaimo to San Francisco would average, I think, about four days. I have nothing to do with Ladysmith and would not have any reason for communicating with Mr. Norcross or the Western Fuel Company concerning the methods of weighing or making estimates of weights there, and I have not done so at any time that I can recall.

**[Testimony of Edward Park, for Defendants.]**

EDWARD PARK, a witness called for the defendants and sworn, testified as follows:

Direct Examination by Mr. KNIGHT.

I am, by occupation, a tallyman and checker, and

(Testimony of Edward Park.)

am now, and have been for about 31 years, employed in that capacity with the Pacific Mail Steamship Company. I have been tallying and checking coal which goes into the vessels of said steamship company at this port. My duties have been to see that the tubs of coal that go up are average tubs, kept even, and to see that the coal would not go overboard and that it was weighed by the Government weigher. I keep a record of the quantity of coal delivered.

Q. Will you state what you yourself have observed with respect to the manner in which the buckets have been loaded, both those [1326—1264] which have been weighed and those which have not been weighed?

A. Well, sir, the coal that is weighed and the coal that is not weighed is about an even thing, the tubs are kept as near correct, an average tub as possible.

Q. Would you say that that was the fact extending over the time that you have been checking for the company coal which the Western Fuel Company have been supplying to the Pacific Mail Steamship Company? A. Yes, sir.

We have had three hatch-tenders on the barges that I recall; Rocca, Dan Pallas and Frank Wilson. A long time ago David G. Powers and Edward Powers were hatch-tenders for a short time. If the coal is very dry, the crew of the steamer, and also the trimmer, has it wetted down so as to keep the dust from flying. These steamers are coaled in rainy weather as well as in fair weather. The barges are nearly all open from stem to stern so that the coal

(Testimony of Edward Park.)

is exposed to the weather.

Q. What has been your experience with reference to the frequency with which weights are taken by the custom-house weigher?     A. One in 15.

Q. Are they taken in rounds of tubs or are they taken at random?

A. Well, they are taken in different ways. Sometimes they will weigh one tub and then wait until 2 or 3 tubs go up and weigh another one; sometimes they will weigh two tubs at a time provided that the tubs are average tubs, even, not overloaded.

Q. Will they sometimes weigh a round of tubs starting with No. 1, and then again starting with No. 2, and then again starting with tub No. 3, or again starting with No. 4, and then take a round?

A. No, sir, they don't take them that way. [1327—1265]

Q. How do they take them?

A. If the barge is stopped for a while; that is to say, if the bunker is blocked up, they will wait a while, they have to wait on the barge say 10 minutes or a quarter of an hour, and then if those four tubs are in the barge and they are not overloaded, if they are average tubs, the weigher may take three of them, he may weigh three together, but if they are overloaded, up they go, he don't weigh them.

Q. What would you say with reference to the samples of tubs selected by the custom-house weigher for weighing; are they or are they not fair samples of the tubs that are hoisted into the bunkers of the steamers?



(Testimony of Edward Park.)

A. They are, sir, and many times the tubs that are not weighed are heavier than those that are weighed.

Q. I ask you, Mr. Park—possibly you didn't understand my question—whether or not when a custom-house weigher is weighing a round of tubs, instead of starting in with tub No. 1, for instance, he will start in with tub No. 2, or tub No. 3, or tub No. 4 and then weigh four tubs?

A. Sometimes they will start in with tub No. 4.

Q. And then weigh 3, 2 and 1?

A. Not always; sometimes he will start with No. 3; sometimes they change them.

Q. Have you ever seen coal being laden into the Pacific Mail Steamers that contained considerable moisture? A. Yes, sir, many times.

Q. Due to what cause, so far as you yourself observed, how did it get wet?

A. Well, we have had barges that have laid in the stream some of them two months, and they have been exposed to the elements and the rain and when we would get them the water would run out of every tub, they would be wet from the top of the coal to the bottom of the barge. [1328—1266]

\* \* \* \* \*

Q. Will you state whether or not in weighing this coal any allowance was made by the custom-house weighers on account of moisture in the coal?

A. None whatever.

Q. What conversation, if any, have you ever had with Mr. Mills respecting the manner in which the

(Testimony of Edward Park.)

tubs were to be weighed?

\* \* \* \* \*

A. Well, Mr. Mills has told me a dozen times to have the tubs kept even, and that in case any coal went overboard, which sometimes it does owing to lumpy coal in the chutes blocking, that if any coal went overboard to allow so many tubs what I thought was correct, at the end of the day.

I have kept some of my tally books. These are the books used by me in the discharge of my duties. I would keep the books two or three years and then destroy them.

Q. I show you here a book marked August 15th, 1911, to November 10, 1911, and I take the first page, in which there appears any tallying marks, and I ask you to explain to the jury how you tallied and made note of the tally of the tubs that were laden on the steamers with their weights. Just explain that book. You have here, for instance, at the top, "Well." I suppose that means "Wellington"? A. Yes.

Q. Wellington coal, ex "Melrose," to steamer "Mongolia," August 15, 1911. You have the page ruled off and you have certain lines. Below certain check-marks appear a series of figures in a column. Will you state to the jury what that first column of figures means, to what tub does it refer?

A. To No. 1.

Q. To No. 1?

A. To tub No. 1, and we have seven weights. On tub No. 2 we have the same. On tub No. 3 we have seven. On tub No. 4 we have seven. That makes 28

(Testimony of Edward Park.)

weights altogether. [1329—1267]

Q. Seven weights on each tub?

A. Seven weights on each tub.

Q. And those figures are the tonnage?

A. The gross weight.

Q. In lbs. The gross weight in lbs.

Mr. SULLIVAN.—Q. What is the date of that?

A. August 15, 1911, steamer "Mongolia."

Q. And what barge?

A. The barge "Melrose."

Mr. KNIGHT.—Q. After you get your weights—I presume you get them from the custom-house weigher—how were the net weights arrived at?

A. When you get seven weights you divide the gross by 7 and then deduct the tare from that, which gives you the net weight.

Q. In that particular instance what was the figure?

A. The net weight was 1524; that was the average of No. 1, the net of No. 1.

Q. That was the average net of No. 1?

A. Of No. 1.

Q. And you did the same with reference to the other three buckets?

A. The same with No. 2, with No. 3 and with No. 4.

Q. And then the check-marks or tally-marks above the column of figures indicate what?

A. Those indicate the number of tubs.

Q. The number of tubs that went up?

A. The number of tubs, yes, sir.

(Testimony of Edward Park.)

Q. How often did you compare with the custom-house weigher your figures, either as to the weights or as to the number of tubs that were hoisted?

A. About every few minutes, about 5 or 10 minutes, or if he was not very close to me a signal would signify how many tubs he had, and so we compared it.

Q. Will you state whether or not you compared with the custom-house weigher at the close of the day the total tonnage that had been hoisted on the steamer?

A. Yes, sir, we make up our [1330—1268] books at 5 o'clock and we both agree as to the amount and everything is correct.

Q. During these times that you have testified to who if anyone represented the Western Fuel Company on the barges?

A. Sometimes Mr. Smith did.

Q. Mr. Edward Smith?

A. Mr. Edward Smith, but he was not there all the time, he might be called away to some of the other steamers, to the Japanese steamers, or the Australian steamers, or to tramp steamers.

Q. If Mr. Edward Smith was not there did the Western Fuel Company have anyone representing it for the purpose of ascertaining the weight of these tubs and the weight of coal that had gone into the steamer?

A. Not if I was there and the custom-house officer was there.

(The entry on the page of the tally-book herein-

(Testimony of Edward Park.)

above referred to was at this point offered in evidence, and it was explained that the offer was made for the purpose of showing the system pursued by the witness and the way in which the weights of the tubs ran, it being explained that, of course, the entry would show only how the tubs ran on that particular day and what would be the discrepancy in the weights of the tubs. It was conceded that the entries show only the weights of the tubs that were in fact weighed.)

“Mr. KNIGHT.—I merely want to show the jury how the weight of the tubs run, taking tub by tub. For instance, I will take tub No. 1, the weights ran 2300, 2280, 2220, 2220, 2230, 2200, 2010, No. 2 tub ran: 2100, 2120, 2180, 2150, 2120, 2140, 2190. No. 3 ran: 2120, 2100, 2270, 2170, 2190, 2100, 2164. No. 4 ran: 2020, 2040, 2230, 2210, 2180, 2100, 2160.”  
[1331—1269]

Q. I will ask you, Mr. Park, with reference to these other books, they are all kept alike, I presume?

A. Yes, sir, they are all about the same.

Q. Take the book to which I now refer, dated May 23, 1911, to August 10, 1911, being a day on which Wellington coal was put in from the bark “Theobald” to the steamer “Korea,” June 28, 1911, taking a similar series of entries, tub No. 1 ran: 1550, 1550, 1580, 1570, 1540, 1580; tub No. 2: 1590, 1500, 1600, 1630, 1650, 1560; tub No. 3 ran: 1720, 1660, 1700, 1700, 1750, 1670; tub No. 4 ran: 1620, 1620, 1680, 1670, 1630, 1660. There was a difference there of weight between some of those tubs of from 1500 to 1750 lbs.



(Testimony of Edward Park.)

—250 lbs. difference in two tubs; is that correct?

A. Yes, sir.

Q. Would you say that that difference would exist on account of the nature of the coal that was being hoisted? A. Yes, wing coal, light, lumpy.

(The portion of the tally-book last read was for the date June 28, 1911.)

Mr. SULLIVAN.—And do you say that the difference exists in the weights taken of one particular tub?

Mr. KNIGHT.—There is as much discrepancy in these tubs as 250 lbs.

Mr. SULLIVAN.—That is, a discrepancy in the weights taken in tub No. 1 for instance, or the difference between tub No. 1 and tub No. 2?

Mr. KNIGHT.—One tub, No. 2, weighed 1500, and a tub, No. 3, weighed 1750 lbs.

Mr. ROCHE.—250,000 lbs. more than the other tub? [1332—1270]

Mr. KNIGHT.—250 lbs. more than the other tub, yes.

Mr. McCUTCHEN.—You have got the same tub 1500 and 1660.

Mr. KNIGHT.—You have got 1500 and 1660 on the same tub, 1500 on tub 2, and on the same tub 1660; that is 160 pounds excess.

Q. That was due, Mr. Park, you say, to the character of the coal? A. Yes.

Q. The coal differs considerably in weight as to whether it was fine or coarse?

A. Certainly; if it is lump coal, it weighs light, but

(Testimony of Edward Park.)

if it is fine coal it weighs heavy.

Q. Do you recall about how many tubs there are to the ton in the barge "Nanaimo" and "Theobold"? About how much will 100 tubs go on either one of those two barges?

A. Well, that depends upon the coal.

Q. The average coal that you get?

A. If it is Japanese coal, 100 tubs will go about 45 or 56 tons to the 100 tubs, but if it is Wellington coal, or Comax, the 100 tubs would go 68 or 67 tons to the hundred tubs; it all depends upon the coal.

Q. There are smaller tubs—

A. (Intg.) On the "Nanaimo" and on the "Theobold" they are small tubs.

Q. How about the contents of the tubs of the "Comanche," "Ruth," and "Melrose"?

A. Much larger tubs.

Q. They are larger tubs?      A. Yes.

Q. About how much larger? How much larger would you say those tubs are?

A. Well, on the "Comanche," the "Melrose" and the "Ruth," if it is Wellington coal, it will go about somewhere in the neighborhood of about 67 to 68 tons to the hundred tubs, but if it is Japanese coal, it will go 6 or 7 tons lighter to the hundred tubs.  
[1333—1271]

If the tubs are not loaded correctly, the engineer will have to hit them a tremendous blow and break something in order to make them tip. A tub of average coal has to be very near even before it will tip.

(Testimony of Edward Park.)

I have seen Mr. Chisholm, the Marine Superintendent of the Pacific Mail Steamship Company, observe the coaling of steamers many times. He was seeing how the tubs were loaded and how the weighing was done, and that the tubs were even.

I think I have the book of my weights taken on the barge "Wellington" on December 18, 1912, in the night-time, in connection with the coaling of the steamer "Korea." (Said books are referred to in the evidence here.) On that occasion the tubs were correctly filled. We had plenty of light that night. We have two arc lights, one on each side of the chute, and we have two clusters of lights, one out on the framework showing where the tubs are to be dumped so the engineer can see it, and another cluster down in the hold so that the men and we all can see the tubs. In addition we have about 6 or 7 large coal oil lamps down in the hatch. That is about the extent of lights we have in coaling at night. I always have a lamp of my own. The two lights set on each side of the hatch are on the steamer on both sides of the chute. We have sufficient light to see plainly the extent to which the buckets were filled. As to the custom-house weighers who were there that night on the barge "Wellington," I would say I had Mr. Finnegan from 6 until 12, or a few minutes before 12, and Mr. James Neelan from 1 until 6 in the morning.

Q. Where was Mr. Finnegan that night, Mr. Parks, while he was performing his duties as weigher?

(Testimony of Edward Park.)

A. He was around there, [1334—1272] he was around with me a good many times, and he was around at the hatch, and he was all around every where.

Q. Did he appear to be observing the manner in which these buckets went up?

A. You bet he did; there couldn't be a finer man than Finnegan, more attentive to his duties than he.

Q. How many weights, if you recall, did Mr. Finnegan call for and take that night?

A. Let me see. We had 50 tubs on each number, and we took four weights.

Q. Were they coaling rapidly or slowly that night?

A. Well, I think it was not—I don't think it was very quick; we did 134 tons from 6 to 12.

Q. 134 tons from 6 to 12 o'clock? A. Yes.

Q. How many buckets were weighed during the first part of the night, during the hoisting of that 134 tons. A. 16, four on each.

Q. 16 tubs? A. Yes, 4 on each.

Q. About with what frequency were these tubs weighed?

A. 1 in 15; that is to say, when I say 1 in 15, it might have been 14 and it might have been, say, 17; but the 4 tubs were sufficient.

Q. Were they weighed with a fair degree of regularity? A. Oh, yes.

Q. Now, where were you during that night, Mr. Parks? A. Right close to, very near the tub.

Q. Do you observe and did you observe the manner in which the buckets were filled? A. I did.

(Testimony of Edward Park.)

Q. How were they filled?

A. They were filled even, average tubs.

Q. On the morning shift, you say Mr. Neelan was on?

A. Mr. Neelan was on the morning shift from 1 to 6.

Q. Will you state what Mr. Neelan was doing during the coaling [1335—1273] of the steamer, during the early morning hours?

A. He was on the barge, around every place, and part of the time very near to me.

Q. Was he at any time away from the place where the buckets were being hoisted? A. No.

Q. Do you remember making any complaint in the presence of Mr. Freund respecting the weights of any of the buckets, or the manner in which any of the buckets were filled?

A. Well, sometimes I call the Government weigher's attention to—if I think it is a little too heavy, or sometimes—but not very often, very seldom.

Q. That is, at times, you have occasion to make some complaint or objection?

A. Once in a while, certainly.

Q. Now, how frequently, Mr. Parks, if you recall it, do those occasions arise when you have to make same complaint regarding the manner in which these buckets are being filled? A. Very, very seldom.

Q. Is it or is it not a frequent occasion for you to make complaints or have cause to make complaints respecting the manner in which the coal is being



(Testimony of Edward Park.)

laden into the buckets?      A. Very seldom.

Q. Now, are these scales tested by the custom-house weighers before they start in with their work?

A. Yes, twice.

Q. What is that?

A. Twice at night; they are tested when they start in; if we start in, say at 6 o'clock, before they weigh they test the scales, balance them.

Q. Do they take the platform off?

A. Certainly, they take the platform off and see if it balances, and if they don't balance, then they take some of the weights—they would [1336—1274] take a couple of the weights and put them on the scales, and see if they are all correct, and then change the weights to the four corners of the scales, so as to see if there is any variation.

Q. That is, they are all weights that they, themselves, produced, weights that are known to weigh so much?      A. Yes.

Q. Which they frequently use for testing scales, custom-house weights?

A. They will take the weights on top of the scales; they will take a couple of 500 pounds—the weight of them is 5 pounds. They are 5 pounds in weight, a couple of them, but of course they show 500 pounds on account of the lever, but the weight, itself, is only really 5 pounds.

Q. Now, I understand these weights were all calculated and were all compared every night by five o'clock?

A. Every day the work is made up and we agree

(Testimony of Edward Park.)

with the custom-house officers.

Q. Do you ever take care in any other way than that, to ascertain whether or not the weights contained in your book are correct before they are handed in to the Pacific Mail Steamship Company?

A. Yes, we check them, we call them out; every weight we call out with the custom-house officer, and then when we make up our calculations, we compare it, and before we leave, we see that everything is correct.

Q. Then do you hand in your book, or is there anything further that you can do to ascertain the correctness of your figures—do you ascertain whether there is any change made in the custom-house books?

A. When we get through with the steamer, suppose it is a week, or five or six weeks in which we are coaling, every night I agree with the weigher, and then when the steamer is finished, the books go up to the custom-house and I wait a few hours—if it is a heavy shipment of coal I perhaps wait a day; then I call at the custom-house and ask [1337—1275] if such and such a steamer is O. K.'d, and then they give me the return, which agrees almost every time with our books.

Q. Then you turn in your books to the Pacific Mail Steamship Company?

A. Well, I give the steamship company a report every night; then I make out my receipts, then, when the amount is correct.

Q. Do you have any trouble at all, Mr. Parks, in taking weights, or in taking accurate weights, when

(Testimony of Edward Park.)

your barge is listing, or when the weather is particularly rough?

A. Well, if it happens to be rough, and she rolls, then we level the scale with a thin board on the side, so as to keep her level, in case it does.

The amount of the donation that I received from the Western Fuel Company at Christmas time was \$20. In answer to the question what I understood that to be for, I would say that I used to write considerable reports of the different barges for the Western Fuel Company every day. Sometimes if we were closing the barges it was considerable work. I would give the company the daily report of the amount of coal from each barge and the total into the steamer.

Direct Examination by Mr. McCUTCHEN.

(The attention of the witness was here directed to his tally-book.)

The figures that are shown me apply to May 3d. The first row of figures represents tub No. 1. I find a difference of 120 pounds between the highest weight registered there and the smallest weight on tub No. 1. On the next tub I find a difference of 170 pounds; on tub No. 3, a difference of 170 pounds. Turning to the next page, I find the weight on tub No. 1 2140 pounds, and, on the same tub, another weight of 2000 pounds, making a difference of 140 pounds; on the second tub a difference of 270 pounds; on tub No. 3 a [1338—1276] difference of 180 pounds; on tub No. 4 a difference of 90 pounds.

(Testimony of Edward Park.)

Direct Examination by Mr. KNIGHT.

Referring again to my tally-book and to tub No. 2, registering Wellington coal delivered by the "Ruth" to the Steamer "Siberia," July 9, 1911, I find on that tub a weight in one case of 2010 pounds and in another case of 2210 pounds, a difference of 200 pounds.

Q. Let me ask you one further question: To what extent, while you have been serving as a tally-man and checking clerk on the barges, while the Western Fuel Company was coaling these steamers, did the custom-house weigher attend to the weighing of that coal and the examination as to the contents, the extent to which the buckets were full?

A. They did, sir.

Q. To what extent would you say did they give attention to their duties; were they careful, or, on the other hand, were they not?

A. Well, nearly all the custom-house officers that I have had during my experience, that have been in the coal-weighing for years, I think now in a minute what an average tub is, and in case the tub is overloaded they will send it up, or they will take lumps off of the tub and throw it on the deck, if they consider it too heavy; they have done that many, many times, thrown coal right off on the deck, where it is piled up, and send it up, and don't weigh it.

Q. Is it a fact that you have weighed almost all, or, rather, that you have checked or tallied all of the coal that has been from the barges of the Western Fuel Company on the steamers of the Pacific Mail

(Testimony of Edward Park.)

Steamship Company?     A. Yes. [1339—1277]

Cross-examination by Mr. SULLIVAN.

I took the weight of all the coal that is laden upon the ships of and for the Pacific Mail Steamship Company. During the past two or three years, however, when a ship would be coaling from two barges we have had the assistance of tally-men. Before that, we took the Government weight. I, however, take down every weight and have been doing that for 31 years. If there is one barge alongside the ship, I take the weight of every tub that is weighed.

Q. And if there are two barges alongside the ship, if a ship is being loaded from each side, you take the weight of every tub of coal that is weighed?

A. Not on the other side.

Q. Not on the other side?

A. The custom-house officer—only in the last two and a half years or so.

Q. In the last two or three years, haven't the liners of the Pacific Mail Steamship Company been loaded from two barges, as a rule?

A. Well, in a matter only perhaps of one night, or a night and a half.

Q. Isn't it a fact that every liner, at some time or another, before it makes its departure, is laden from two barges, at the same time?     A. Sometimes.

Q. Isn't it as a rule?

A. Sometimes they have got two, a couple of nights.

Q. Isn't it a rule to use two barges generally, in loading for a part of the time at least, the Pacific



(Testimony of Edward Park.)

Mail liners?      A. A part of the time.

Q. At the same time?      A. At the same time.

Q. At the same time?      A. Yes.

Q. As was the case yesterday with the "China"?

A. Yes.

Q. When there are two barges alongside of a ship, discharging into a liner, do you take the weight upon one barge only? [1340—1278]

A. Well, I can't tally the both of them.

Q. You, representing the Pacific Mail Steamship Company, simply take the weight on one barge, and depend on the custom-house weigher for the weights of the other barge?

A. We did up to about three years ago, very near.

Q. Say 2½ or 3 years?      A. Yes.

Q. During the last two and a half or three years, when there were two barges loading fuel into a liner, and you were engaged upon one barge, who represented the Pacific Mail Company on the other barge?

A. We have three tally-men.

Q. The Pacific Mail has three tally-men?

A. Yes.

Q. Who are the tally-men?

A. Mr. Sullivan is one, Mr. Hahn is the other.

Redirect Examination by Mr. KNIGHT.

The custom-house weighers weighed the coal that was hoisted from the barge into the Pacific Mail steamers on an even beam, exactly about halfway. The fine coal weighed more than the coarse coal. The scales on the "Nanaimo" and "Comanche" were hanging scales. Sometimes we had to wait an hour

(Testimony of Edward Park.)

and a half to clear away the coal from the bottom of those scales before they could be used. The reason for that was this:—there is a square bulkhead in the center of the barge, made of wood, the boards being put in at an angle, so that when the shovelers take away those boards, the coal which is left standing straight up in a high pile comes down with a rush and fills up the space. Consequently, we have to wait and get a clear space between the deck and the bottom of the tub before we can take the weights of the tubs. [1341—1279]

Recross-examination by Mr. SULLIVAN.

Q. What has been the custom in weighing tubs? Has it been the custom to just weigh one tub in every fifteen, or a round of four tubs in 60?

A. The custom has been to weigh four tubs at different times; that is to say, they would weigh No. 1 tub, and then wait until two or three tubs went up, and possibly then they might take No. 2, but very seldom; they might go off to No. 4, so as to take an even average, so as not to run them in rotation.

Q. Certain witnesses for the defense here have testified that there was a practice of weighing four tubs at a time? A. Very seldom.